

VERBATIM ¹RECORD OF TRIAL ²

(and accompanying papers)

of

MANNING, Bradley E.

(Name: Last, First, Middle Initial)

[REDACTED]

(Social Security Number)

PFC/E-3

(Rank)

Headquarters and

Headquarters Company,

United States Army Garrison

(Unit/Command Name)

U.S. Army

(Branch of Service)

Fort Myer, VA 22211

(Station or Ship)

By

GENERALCOURT-MARTIAL

Convened by

Commander

(Title of Convening Authority)

UNITED STATES ARMY MILITARY DISTRICT OF WASHINGTON

(Unit/Command of Convening Authority)

Tried at

Fort Meade, MD

(Place or Places of Trial)

on

see below

(Date or Dates of Trial)

Date or Dates of Trial:

23 February 2012, 15-16 March 2012, 24-26 April 2012, 6-8 June 2012, 25 June 2012, 16-19 July 2012, 28-30 August 2012, 2 October 2012, 12 October 2012, 17-18 October 2012, 7-8 November 2012, 27 November - 2 December 2012, 5-7 December 2012, 10-11 December 2012, 8-9 January 2013, 16 January 2013, 26 February - 1 March 2013, 8 March 2013, 10 April 2013, 7-8 May 2013, 21 May 2013, 3-5 June 2013, 10-12 June 2013, 17-18 June 2013, 25-28 June 2013, 1-2 July 2013, 8-10 July 2013, 15 July 2013, 18-19 July 2013, 25-26 July 2013, 28 July - 2 August 2013, 5-9 August 2013, 12-14 August 2013, 16 August 2013, and 19-21 August 2013.

¹ Insert "verbatim" or "summarized" as appropriate. (This form will be used by the Army and Navy for verbatim records of trial only.)

² See inside back cover for instructions as to preparation and arrangement.

1 Q. And is your memory the only time he hit himself was
2 slapping himself on both sides of the head with his palms?

3 A. Yes.

4 Q. So whatever injuries he might have had would be from that,
5 I guess.

6 A. Yes.

7 Q. But obviously whatever happened, you didn't call medical
8 support as far as physical medical support to check him for injuries,
9 correct?

10 A. No, sir.

11 Q. All right, let's talk about your exchange with PFC Manning
12 after Chief Averhart leaves, okay?

13 A. Yes, sir.

14 Q. You then explain to him that his status is being changed
15 and you told him that he needed to surrender his clothes.

16 A. I did.

17 Q. And how long after Chief Averhart leaves does the video
18 camera come where you're speaking with PFC Manning, from your memory?

19 A. A few minutes; it wasn't--if it was--if it was minutes,
20 maybe seconds.

21 Q. Okay. And did you know at the time that you were speaking
22 with PFC Manning that Chief Averhart called a Code Blue?

23 A. I seem to recall that.

1 Q. And my understanding is that a Code Blue would be announced
2 and then the Cell Extraction Team would be suited up.

3 A. Yes.

4 Q. And do you know why there was a need to call a Code Blue?

5 A. In case he further tried to hurt himself and we needed to
6 restrain him.

7 Q. Was PFC Manning doing anything at the point that you
8 started talking to him in the seconds after Chief Averhart left that
9 in your mind would warrant a cell extraction at that point?

10 A. No.

11 Q. I'm handing you what's been marked Appellate Exhibit 438E--
12 --

13 A. Yes, sir.

14 Q. ---- and retrieving from you 438D.

15 I want to show the video and I'd like for you to follow
16 along, [pause] and then if you see anything that you think isn't
17 accurate, just let me know, okay?

18 A. Yes, sir.

19 [The video is played.]

20 Q. The transcript that you have in front of you, Master
21 Sergeant, do you believe that to reflect accurately the exchange
22 between you and PFC Manning?

23 A. Yes, sir.

1 Q. Now I'd like to ask you a couple questions about that
2 conversation. It looks like at the beginning of the video, PFC
3 Manning is questioning whether you are outside of the regulations by
4 putting him on Suicide Risk, correct?

5 A. It appears that way.

6 Q. And you say, "I know what you're getting at. Okay, I'm
7 telling you that we're not outside the rules and regulations of
8 anything we're doing, period. We're not," correct?

9 A. I'm telling him that we're not, correct.

10 Q. And then you order him to remove his clothing.

11 A. Yes, sir.

12 Q. And you indicate that his Skivvies can stay on?

13 A. I believe so.

14 Q. And "Skivvies" means underwear; is that correct?

15 A. Yes, sir.

16 Q. So as you're watching the video, PFC Manning is in his
17 underwear.

18 A. Yes.

19 Q. And now you say that he had an outburst.

20 A. Yes.

21 Q. You say that he was moving around, almost punched the wall,
22 and kind of throwing himself about his cell, correct?

23 A. Yes.

1 Q. And you testified earlier that he didn't punch himself in
2 the head.

3 A. Correct.

4 Q. He didn't throw anything.

5 A. No, he didn't throw anything.

6 Q. He just simply apparently had an outburst, correct?

7 A. Yes, sir.

8 Q. And then based upon that outburst, you tell him you're not
9 comfortable with the escalation in his demeanor.

10 A. Correct.

11 Q. And that's why you put him on suicide watch.

12 A. That's why I recommended it, yes.

13 Q. And PFC Manning says that he's not a suicide risk?

14 A. He did state that he was not a suicide risk.

15 Q. And your response to him is that's not for you to decide.

16 A. Correct.

17 Q. He says that he doesn't understand why he's on POI for 6
18 months?

19 A. He did.

20 Q. And then it appears that you chuckle and you say, "I know
21 this is no secret. I have plenty of documentation, plenty of
22 documentation based upon the things you've said, things you've done,"
23 correct?

1 A. Yes.

2 Q. Well what did you mean by "plenty of documentation" at that
3 point?

4 A. By that time, we had gotten documentation from his
5 confinement in Kuwait, in conjunction with the log book that was kept
6 in Special Quarters, his peculiar behavior, along with what we were
7 putting in the weekly documents and his original confinement
8 paperwork.

9 Q. All right, so I want to break those down. So you had stuff
10 that happened in Kuwait.

11 A. Yes, sir.

12 Q. And you would agree with me that that was 6 months previous
13 to this date.

14 A. [Pause] I don't remember the time frame.

15 Q. Well he got to you on July 29th of 2010?

16 A. Yes, sir.

17 Q. And this is January 18th of 2011?

18 A. Okay.

19 Q. So anything that happened in Kuwait would have been at
20 least 6 months----

21 A. If it was immediate, before he left, but I don't recall
22 that it was immediately before he left. I just know that it took
23 place over there.

1 Q. Okay, so it could be even longer than 6 months.

2 A. It could have been.

3 Q. So that--that's the one thing; and then the documentation,

4 I wrote down what you said on direct--you can tell me if there's

5 something in addition to that--making faces, peek-a-boo with the

6 mirror, lifting fake weights, licking bars of his cell, sitting

7 Indian style on his rack, and using his glasses to pluck hair; was

8 there anything in addition to that?

9 A. [Pause] There might have been some dancing, and if there

10 was anything else, I just can't really think of it at this time.

11 Q. All right, then we'll add dancing to that list then. So

12 from that list, this was the erratic behavior that you're talking

13 about?

14 A. Yes, sir.

15 Q. And this is--this erratic behavior, when does this start to

16 be logged based upon your memory?

17 A. I think we did it initially within the Suicide Risk log and

18 then changed to a separate logbook because it got confusing. The

19 things that the guards were documenting in the suicide log, it was

20 making the log confusing, so we created a separate logbook.

21 Q. Do you recall when that was?

22 A. I do not, sir.

1 Q. Would December of 2010 sound about right to you when you
2 started a separate log based upon the Brig OIC's direction?

3 A. I can't say that it does. I'd have to see it to be sure.
4 I really don't remember.

5 Q. All right. Well each of these things: the making faces,
6 peek-a-boo, lifting weights, licking the bars of the cell, sitting
7 Indian style, or using his glasses, or dancing, all those things, did
8 you hear--did you see any of those on your own?

9 A. No, sir; I did not.

10 Q. And you heard those, apparently, from the brig staff?

11 A. Yes, sir.

12 Q. And do you recall who?

13 A. No; guards on posts.

14 Q. So the lower enlisted on posts.

15 A. Yes, sir.

16 Q. And what were these guards reporting to you about this
17 behavior?

18 A. Can you please rephrase the question; like what do you mean
19 "what were"----

20 Q. Right, when they--these guards, they were reporting this
21 behavior in some way?

22 A. Yes, sir.

23 Q. And how were they reporting that behavior?

1 A. It was written in the log, and then after we asked them
2 about it, they would go into further explanation, but it was pretty
3 much the statements spoke for themselves.

4 Q. And did you ever address this behavior with PFC Manning?

5 A. I did not.

6 Q. Did you ever address this behavior with Captain Hocter or
7 Colonel Malone?

8 A. Not me specifically, but I explained to Master Sergeant
9 Blenis that, hey, when you get Captain Hocter over here or, you know,
10 a psychiatrist, whoever it was at the time, make sure that these
11 issues are addressed.

12 Q. Were you aware that the doctors looked at this behavior and
13 said it was normal behavior?

14 A. No, I was not.

15 Q. Would that surprise you?

16 A. It would.

17 Q. And why is that?

18 A. If it's normal behavior, I've never seen it before in a
19 jail.

20 Q. Would it surprise you that the brig staff, you know, the
21 people who are reporting this,----

22 A. Yes, sir.

23 Q. ---- said it was normal behavior?

1 A. It would.

2 Q. And why is that?

3 A. Like I said, I've been in corrections for 21 years. It was
4 unusual to me.

5 Q. So if the lower guards, the brig staff, if they said, hey,
6 look. The behavior we're seeing is pretty much normal behavior for
7 someone on MAX and POI, in their cell for 23 hours a day, that would
8 surprise you?

9 A. It would.

10 Q. Did you ever ask the brig staff, the ones that were
11 reporting this, whether or not they thought it was unusual behavior?

12 A. Never asked them if they thought it was unusual; more so
13 what I got when I came in and he did something, it was, hey, there
14 was another incident logged in the logbook, and that was how it was
15 addressed. I don't look at as--at an incident as normal behavior.

16 Q. And my understanding is what happened was Gunnery Sergeant
17 Blenis was walking by, overhears some guards talking about things
18 they've seen Manning do, and he reports that to the Brig OIC; is that
19 your understanding?

20 A. Not really. I mean, if guard staff saw something, it
21 would--it would just kind of through the normal route go up the
22 chain. You know, if a guard saw it and Gunnery Sergeant Blenis was

1 there, he'd bring the information to me and we'd probably go--both go
2 see the CO.

3 Q. But what if the guards didn't think it was a big deal?
4 Then it, obviously, didn't get reported.

5 A. Then it probably didn't get reported.

6 Q. Right. So then at one point or another do you recall the
7 Brig OIC saying, hey, look, to make things simple, we're going to
8 have a separate logbook and anything out of the ordinary or unusual
9 is going to be documented by you, the brig staff, in that?

10 A. Correct; that did happen.

11 Q. And so that's where some of these things of dancing in his
12 cell or doing some of the other stuff is documented, correct?

13 A. Yes, sir.

14 Q. And at the--I guess at the time that that stuff is
15 documented, do you know whether or not you've taken any extra
16 security precautions based upon this believed behavior?

17 A. Extra security precautions?

18 Q. Right; do you respond to it? You're logging it down, so
19 then do you do something in response to it?

20 A. No. It wasn't--the actions that he was doing wasn't a
21 cause for concern within the security of the facility.

22 Q. What about for his personal health?

23 A. That's what the psychiatrists are coming to visit him for.

1 Q. Well maybe I'm missing understanding. You're saying that
2 he's on MAX and POI because you think he's going to harm himself and
3 you're basing that on behaviors '6 to 7 months prior to this date and
4 these erratic behaviors, correct?

5 A. Correct.

6 Q. So that's what I mean. Based upon these erratic behaviors,
7 did you, the brig staff, do something in response to that?

8 A. We carried out our normal plan of the day; made sure that
9 he was visited on a routine basis. We conducted business as normal.
10 We didn't--if you're asking for something out of the ordinary, you
11 know, as far as going above and beyond, it wasn't the brig, but I
12 know that either from the battalion level or from the base level it
13 was asked for Army support in the aspect of trying to get a regular
14 psychiatrist on hand.

15 Q. Okay, and we'll talk about those steps, okay?

16 A. Yes, sir.

17 Q. Now you said at least in the video demanding that things
18 that he'd said and done make you believe that he can't be a normal
19 detainee.

20 A. Yes.

21 Q. And instead you say those things that PFC Manning has said
22 and done make you stay on the side of caution.

23 A. True.

1 Q. And, again, kind of I guess that was really based upon what
2 happened 6 to 7 months earlier, his intake statement, and then
3 whatever you observed of his behavior during his time at Quantico,
4 correct?

5 A. Correct.

6 Q. When you said to PFC Manning in response to him saying I
7 believe the doctors are recommending me to come off, you say, "Who's
8 here every day; who sees you every day; that's all he is, is a
9 recommendation."

10 A. Correct.

11 Q. "Maybe from a psychiatric standpoint the recommendation
12 he's giving, I get it; I got it; understand; okay, but he's not the
13 only decision-maker. A mental health specialist is not the only
14 decision that gets made," correct?

15 A. Yes, sir.

16 Q. And what did you mean by this?

17 A. Through the review process before that decision goes up to
18 the Brig OIC or the Brig Commander, it's not just the psychiatric
19 opinion or medical opinion or the board, any one thing. It's
20 everything is considered together. It's not just one factor.

21 Q. All right, so you basically have recommendations from, if I
22 understand correctly, the counselor will make a recommendation.

23 A. Yes, sir.

1 Q. Then--and if that counselor's part of the C&A board, then
2 that recommendation just carries over into the C&A board, correct?
3 A. Yes.
4 Q. Then you have the C&A board that considers the psych
5 recommendation?
6 A. Usually we have their paperwork. The psychiatrists that
7 have been there didn't really leave much with us, other than, you
8 know, simple statements and they were out the door, so that's
9 basically all we really had to go off of.
10 Q. All right, so are you saying that the recommendations by
11 the staff, based upon your comments of who's here every day, carried
12 more weight than the psych recommendation that was in and out of the
13 door?
14 A. I'm not saying it carried more weight. I was just saying
15 that everything was considered. Weight, I wouldn't say it was--it
16 was one or the other; everything was considered.
17 Q. Well I'm not taking issue with whether or not everything
18 was considered, but from your testimony just a second ago and from
19 what you said on the video, it appears that the brig staff psychia--
20 or the brig psychiatrist wasn't there every day, right?
21 A. Correct.
22 Q. And was apparently what you just said was kind of in and
23 out?

1 A. Yes, sir.

2 Q. And didn't always leave you necessary paperwork.

3 A. Correct.

4 Q. So did you consider the brig staff's observations to be

5 more reliable than the brig psychiatrist?

6 A. Not all the time.

7 Q. And why is that?

8 A. Depending on the situation, what paperwork was left behind;

9 what comments were made; how long they spent with the individual;

10 what interaction we had with the psychiatrist before they left; what

11 interaction we had with them in general. Certain psychiatrists there

12 was a lack of communication; others there wasn't. That held weight

13 with as far as the doctor's recommendation on, you know, yeah, he's

14 making this recommendation but, you know, he's not leaving us with

15 anything. Call him back, try and get more, and there would be

16 nothing more.

17 Q. Others have said that Captain Hocter was not available to

18 the staff; was that your observation?

19 A. Yes, sir.

20 Q. And others have also said that Captain Hocter did not spend

21 enough time at the brig; was that your observation?

22 A. It was.

1 Q. Did you trust the recommendations that you were receiving
2 from Captain Hocter based upon that?

3 A. Not during his time with PFC Manning.

4 Q. And can you tell Colonel Lind why not?

5 A. He's--essentially, ma'am, he's the same doctor that
6 recommended that Captain Webb came off Suicide Risk and not long
7 after Captain Webb killed himself.

8 Q. And so I guess from that, based upon missing that call, he
9 wasn't somebody that had the greatest reliability?

10 A. I can't say in everybody's eyes. I can only speak for
11 myself, but I was not confident in his recommendation.

12 Q. And for a moment let's talk about Captain Webb. You had
13 indicated that apparently he killed himself with pills and with a
14 plastic bag?

15 A. Yes, sir.

16 Q. Did anyone in the brig staff see that coming?

17 A. No, sir. I had several conversations with the staff. I
18 don't recall anything after the fact, regrettably, that anybody
19 noticed anything.

20 Q. And you said that there was an investigation and it
21 concluded that "we were not at fault."

22 A. Yes, sir.

1 Q. I imagine, you know, the brig staff that--saw Captain Webb
2 every day, correct?

3 A. Yes, sir.

4 Q. They were with him every day.

5 A. Yes, sir.

6 Q. And so from their perspective, there were no alarm bells
7 that went off based upon anything Captain Webb did or said.

8 A. Correct.

9 Q. Now with regards to Captain Hocter, was this "we're not at
10 fault" also in relation to him too?

11 A. I was more so just from the standpoint of the report that
12 we had gotten back from the investigating officer. I had--I had a
13 conversation with him after the report was completed and he was like--
14 -he basically said that the--you know, it was not the brig. You guys
15 did everything by the letter, and that was really the end of the
16 conversation. It wasn't much more than that, so if it referred to
17 Captain Hocter, I couldn't tell you.

18 Q. I guess that's what I was trying to understand. There's an
19 investigation into it. Does the investigator when he says you, the
20 brig, did everything you could, does that include Captain Hocter
21 within that statement?

22 A. I don't know if it does or not.

1 Q. Do you know if the investigator said that Captain Hocter
2 was at fault?

3 A. I do not.

4 Q. And who did the investigation; do you recall?

5 A. I do not recall, sir. I----

6 Q. Do you recall the rank of the investigating officer?

7 A. It was a colonel.

8 Q. And----

9 A. As a matter of fact I want to say----

10 Q. Go ahead.

11 A. I want to say Colonel Smith.

12 Q. So the investigation by this colonel, did the brig ever
13 receive a copy of the investigation?

14 A. Yes, not long after.

15 Q. And after receiving a copy of the investigation, was
16 Captain Hocter removed as the brig psychiatrist?

17 A. He was not.

18 Q. From your observation, was anything done to Captain Hocter
19 in the form of a reprimand or some other----

20 A. No, sir.

21 Q. ---- administrative punishment?

22 A. [No response.]

23 Q. I'm sorry?

1 A. No, sir.

2 MJ: Does that mean you don't know or it didn't happen?

3 WIT: As far as I know, it didn't happen, ma'am.

4 MJ: Thank you.

5 WIT: Yes, ma'am.

6 Q. Did you trust the recommendations of Colonel Malone?

7 A. I didn't really have any act--any interaction. I would

8 just say that his recommend--his recommendations held weight. I

9 never really had any conversations with him at all, sir, so I

10 wouldn't say that anything was discounted for any reason that Colonel

11 Malone made a recommendation.

12 Q. Well was Colonel Malone also not accessible to the staff

13 like Captain Hocter?

14 A. He was a little bit more, you know, personable and

15 accessible with the staff, definitely more than Captain Hocter. I

16 just--me personally I didn't have too many interactions with him. It

17 was more so Master Sergeant Blenis, Chief Warrant Officer Barnes.

18 Q. Did Colonel Malone spend enough time in the brig from your

19 observations?

20 A. I would have liked to have seen more.

21 Q. And just so I get an idea, in general when Captain Hocter

22 came, do you recall how long he would spend in the brig before he

23 left?

1 A. I couldn't put a time stamp on it. He was in without
2 anybody noticing; never let us know that he was there; and out and
3 wouldn't let anybody know he left.

4 Q. And what about Colonel Malone?

5 A. He was pretty good about letting us know when he arrived
6 and making sure that Master Sergeant Blenis had gotten the paperwork
7 that was needed prior to leaving. Still his time, like I said, was
8 limited. I'm sure he had other patients to go see.

9 Q. So from your perspective as the--basically the person
10 that's in charge of making sure mental health is coming to the brig,-
11 ---

12 A. Yes, sir.

13 Q. ---- did you feel you had adequate mental health support at
14 Quantico?

15 A. We had--I would have liked to have seen more. I'll make
16 that statement and say that we had conversations--I had conversations
17 with Chief Warrant Officer Averhart and Chief Warrant Officer Barnes
18 about the possibility of maybe somebody coming over for a lengthier
19 time, additional support, but I know during Chief Warrant Officer
20 Averhart's stand as the OIC, we were pretty much told that Captain
21 Hocter was it, that there was nobody else, and who am I to say
22 otherwise, so I didn't--I didn't pursue it any further.

1 Q. Did you ever approach Captain Hocter as being the person
2 that's responsible for getting adequate mental health support at the
3 brig and say, "Look, sir. I have a concern. I don't think you're
4 doing your job correctly"?

5 A. I had a conversation with him about a stamp. We had wanted
6 to better certify his documents. The medical profession uses a stamp
7 pretty much across the board when doctors sign their documents. He
8 basically refused. His words to me, almost exact, were "When the
9 brig pays for one, I'll get one."

10 Q. And did you address this with any of his superiors?

11 A. I took it to my superior, Chief Warrant Officer Averhart,
12 and Chief Warrant Officer Averhart, he was working on that issue for
13 quite some time. It never really got resolved, and he--Captain
14 Hocter had basically said that "I'll continue to sign my documents
15 and that's all you'll get."

16 Q. So I guess other than the stamp issue, did you address any
17 of your concerns with Captain Hocter?

18 A. No, sir.

19 Q. And why not?

20 A. It was really from the standpoint of him conducting
21 business. He's the psychiatrist. He's going to conduct business how
22 he sees fit. I can address it through my senior officers but didn't

1 necessarily think that it was appropriate that I address it directly
2 to him.

3 Q. Well do you see how if you're not getting recommendations
4 that you trust that that makes it more difficult for you, the brig
5 staff, to make informed decisions?

6 A. Can you rephrase the question, sir?

7 Q. Certainly.

8 A. Yes, sir.

9 Q. Can you see if you're receiving recommendations from mental
10 health professionals that you don't trust----

11 A. Yes.

12 Q. ---- how that would make it more difficult for you to do
13 your job?

14 A. Oh, yes, sir, definitely.

15 Q. And obviously more difficult to make informed decisions as
16 to what status a particular detainee should be.

17 A. Yes, sir.

18 Q. So from your perspective with the 21 years of experience in
19 corrections, why would you let that problem persist?

20 A. I didn't just let it persist. I, you know, went--had the
21 conversation with Chief Warrant Officer Averhart. She really wasn't
22 in the medical profession, but I also sought out the knowledge of Ms.
23 McClain, who handled the PTSD, and just from a different standpoint,

1 "What do you know from the psychiatric level on the base and what's
2 available?" and she had basically told me the same thing, that there
3 was really nobody else available. I don't think it was--and I
4 pursued the issue just, you know, kind of from within the staff to
5 the battalion. I didn't personally talk to Colonel Oltman about it,
6 but Chief Warrant Officer Averhart did. I don't think anything
7 really took place until Chief Warrant Officer Barnes came in, and
8 then different pieces started to move around, adjustments, saw
9 different faces. It seemed like things were picking up.

10 Q. And when you say "things were picking up," I guess at that
11 point that you have Colonel Malone?

12 A. I don't remember the time frame, sir. I know that for a
13 time frame there was a few individuals that came in with Captain
14 Hocter during his transition, then Colonel Malone, but I don't really
15 remember the time frame.

16 Q. And with Colonel Malone, with his recommendations to
17 consistently remove PFC Manning from POI,----

18 A. Yes, sir.

19 Q. ---- can you tell me why those recommendations weren't
20 followed?

21 A. No; we just basically looked at it, you know, as it was,
22 that it was a recommendation, but with what we were seeing in his
23 behavior, you know, I can't speak for the other staff members. Each

1 one of us made our own individual recommendation as far as his status
2 is concerned, and my personal recommendation based off of everything
3 that I had was that his status needed to remain the same.

4 Q. All right, so then on 2 March you have a conversation with
5 PFC Manning, correct?

6 A. Yes, sir.

7 Q. And I want to talk to you about that conversation.

8 A. Yes, sir.

9 [The civilian defense counsel handed a document to the court
10 reporter. The court reporter marked the document AE 438F and
11 returned it to the civilian defense counsel.]

12 CDC[MR. COOMBS]: I'm retrieving from the witness what has been
13 marked 438E; handing the witness Appellate Exhibit 438F.

14 WIT: Thank you, sir.

15 Q. Master Sergeant, if you'd glance at that for a second and
16 tell me is that the conversation that you had with PFC Manning on
17 2 March 2011?

18 A. Yes, sir, it was.

19 Q. And basically the genesis of this conversation was you
20 going to just talk to him to check to see how he's doing?

21 A. No. I had went to address I believe it was in the form of
22 an observation report that I received from Corporal Sanders, who was
23 posted, to find out why he didn't understand why he was relinquishing

1 his clothing but more so to address that he's to follow the orders
2 that are ----

3 Q. All right.

4 A. ---- that are given to him.

5 Q. And that's when PFC Manning exhibited frustration with not
6 being off of MAX and POI for 8 months.

7 A. He did, sir.

8 Q. And do you recall him asking you what he could do to get
9 off of POI?

10 A. Yes.

11 Q. And do you recall telling him that the facility just viewed
12 him as a risk of self-harm?

13 A. Yes.

14 Q. And this is when PFC Manning said he didn't understand why
15 all the items were being taken from him, correct?

16 A. [Pause to review exhibit] Yes.

17 Q. And then he said, you know, you're taking all these items
18 from me but you're not taking my underwear.

19 A. Correct.

20 Q. And that's when he said, apparently, quote, with the
21 elastic band which is probably the most dangerous piece, end quote.

22 A. Yes, sir.

1 Q. When he said this, he was smiling when he made this
2 comment?

3 A. It wasn't so much of a smile. PFC Manning through some of
4 the conversations we've had--more of a chuck--more of a chuckle. He
5 gave a quick chuckle and then he'd be straight again, like straight-
6 faced. It wasn't--he wasn't smiling during the whole time. He was
7 talking to me, and then he kind of, you know, just a quick chuckle,
8 kind of like I did in the video, and then stopped.

9 Q. Now you indicated by your report that when he chuckled
10 briefly he did so as if the conversation he was having with you was
11 absurd.

12 A. Yes.

13 Q. And at that point you apparently--you don't tell him that
14 you're concerned by what he had to say, correct?

15 A. Correct.

16 Q. And at least on direct you said you didn't do that because
17 you didn't want him to do anything to harm himself?

18 A. Yes, sir.

19 Q. Did you immediately call mental health support?

20 A. No, sir.

21 Q. And why not?

22 A. The time I walked out of Special Quarters probably took me,
23 I'll say, less than 30 seconds ----

1 Q. Uh-huh.

2 A. ---- to go see Chief Warrant Officer Barnes and Master
3 Sergeant Blenis and address the issue. When we had talked about it,
4 that was when the decision was made to both get a hold of mental
5 health but also to--that we were going to take his Skivvie drawers.

6 Q. Okay, but the--right after hearing this comment, if you
7 were alarmed by it, wouldn't the natural thing to do would be to go
8 to mental health to get mental health down immediately?

9 A. No, sir. I'm a jailer, so my first instinct was to let my
10 staff know; make sure that they were observant and that they took the
11 proper precautions.

12 Q. And now I guess as a jailer when you went to go talk to
13 your staff, why wouldn't you at that point, considering your
14 position, if you thought there was a real risk just simply have PFC
15 Manning surrender his clothes at that point?

16 A. I am not authorized to do that, sir. The ----

17 Q. You can't--you can't make that decision.

18 A. The Brig OIC has the authority to remove clothing.

19 Q. Doesn't the DBS also have?

20 A. When he is acting in the capacity of the Brig OIC, but she
21 was there that day. I'm not going to undermine her authority of what
22 I don't have.

23 Q. All right, so then when you go talk to Chief Barnes, ----

1 A. Yes, sir.

2 Q. ---- why wasn't PFC Manning's underwear then immediately
3 removed from him?

4 A. I don't remember the step process that we took that day,
5 when we did take them, the time frame that took place in between; I
6 just know that they were taken.

7 Q. You don't recall taking them at the end of the night, then?

8 A. I do not.

9 Q. And from PFC Manning's comments to you, could you see, at
10 least, the possibility that he was saying, "Look, these conditions
11 are absurd. If I wanted to harm myself, I could with my underwear";
12 could you see that as a possible meaning of what he had to say?

13 A. No, sir. I had--I immediately was concerned that he would
14 even point something like that out to me.

15 Q. No, I mean, I'm not taking issue with the fact that your
16 testimony is you were concerned by it. What I'm asking is, as you
17 sit there, could you see the other side of the coin, where the
18 statement really was just him saying to you, "Look, this is absurd
19 how I'm being treated."

20 A. No, sir. Again, it's something within the jail. You know,
21 I think I said it earlier. There's certain words that you just don't
22 say, and things associated with suicide or escape are unacceptable.

1 Q. All right, so with regards to the conversation you had with
2 PFC Manning on the 18th, ----

3 A. Yes, sir.

4 Q. ---- we see an exchange between you and PFC Manning that
5 seems to be a conversation.

6 A. Yes, sir.

7 Q. Would you agree?

8 A. Yes, sir.

9 Q. And was that conversation typical of your conversations?

10 A. Never that lengthy; a lot shorter than that. Most of our
11 conversations was spark an interest about chow; spark an interest
12 about his command and how he was treated on temporary absences; how
13 his command visits went; just trying to get him to talk but, "I'm
14 fine, Master Sergeant," and that kind of told me, okay, move on.

15 Q. All right, so with regards to your other conversations,
16 your questions were how's chow; how's your command visits; any
17 problems, stuff like that?

18 A. Yes, sir.

19 Q. And would you agree with me, though, the answers to that
20 could be short, no problems; chow is good?

21 A. They could.

1 Q. And then the 18th here when you actually have a
2 conversation about something that would involve, I guess, more
3 in-depth conversation, ----

4 A. Yes.

5 Q. ---- PFC Manning, in fact, speaks to you more in-depth,
6 correct?

7 A. Yes.

8 Q. So other than, I guess, the 18th of January, is your
9 testimony that PFC Manning would never speak to you at all other than
10 the short, yes, Master Sergeant; no, Master Sergeant?

11 A. I can't say never at all. I'm sure there were other
12 conversations in there that I just don't recall. I recall one
13 specifically just to--just to ensure that it's never, when he was
14 taken out by his command the first time, the entire facility, to
15 include myself, had some concerns that he was placed with a command
16 that he did not know and we were concerned that they were taking him
17 into custody to a place that he was not aware of. I sent somebody
18 along. I additionally asked him how the--everything went, to include
19 was he provided chow; how did they treat you; how did they talk to
20 you, and he talked a little bit but it was pretty much short answers.
21 But when you talk about the length of the conversation, there were
22 some that--very few--but there were some that did go on a little bit.

1 Q. And could you see where, I guess, the times that it wasn't
2 lengthy responses that maybe the questions didn't require a lengthy
3 response?

4 A. That could be the prob--that could be the issue or he just
5 didn't want to talk.

6 Q. Now once you told Chief Barnes about PFC Manning's
7 statement, she made the decision to start to remove his underwear at
8 night.

9 A. Yes.

10 Q. And that next morning, PFC Manning was standing naked for
11 morning count.

12 A. He was.

13 Q. And I believe that was because his clothes had not been
14 returned to him, correct?

15 A. That's what I was told but I was also told that the DBS
16 that conducted count, that his clothes were there on the feed tray
17 slot but it was all by word of mouth; I never--never saw whether or
18 not he had them or not. My presumption was that they weren't there
19 because he had a blanket, and that's what Staff Sergeant Terry had
20 him cover up with was a blanket.

21 Q. All right, so let's go just with stuff that you know, okay?

22 A. Yes, sir.

1 Q. Do you know that PFC Manning was standing naked for morning
2 count?

3 A. Yes, he was.

4 Q. And as a DBS, you would agree with me, having done that
5 position before, that if you're walking by a cell and you see a
6 detainee standing naked you're going to stop your count.

7 A. Tell him to cover up.

8 Q. Exactly.

9 A. Yes, sir.

10 Q. And your testimony is that that's what Staff Sergeant Terry
11 did?

12 A. Yes.

13 Q. And how do you know that?

14 A. That's what he told me.

15 Q. And so what he told you was that he did what?

16 A. He told me that in conjunction with count, so, you know,
17 Bed Cell 1-9-1, as soon as you walk into Alpha row,----

18 Q. Right.

19 A. ---- it was right there, he just kind of stopped for a
20 minute. "Hey, you're supposed to be covered up," and then he moved
21 on. I don't know if he grabbed the blanket or not. I don't recall
22 what took place or if he made him grab a blanket, but Staff Sergeant

1 Terry, you know, I do remember him telling me that his words were,

2 "You're supposed to be covered up."

3 Q. Okay, so from your memory, all that happened was Staff
4 Sergeant Terry looked at him and said, "Hey, you're supposed to be
5 covered up," but you don't know if he then enforced that to say, "Go
6 get a blanket," correct?

7 A. No; I don't know. Most likely he continued on with count.
8 Whether or not he addressed it afterwards or not, we didn't have that
9 conversation.

10 Q. Would the DBS--and I'll just ask you these questions as
11 your experience as a DBS, ----

12 A. Yes, sir.

13 Q. ---- would you then as a DBS say, "Where is this detainee's
14 clothes?"

15 A. I would immediately address the Special Quarters staff
16 because that's their responsibility.

17 Q. So then you'd go to Special Quarters staff and you'd say,
18 "Where's the clothes?"

19 A. Yes, sir.

20 Q. And you would expect, then, that they would be made
21 available and handed to the detainee.

1 A. Should have already been laid out prior to reveille. Is
2 there a possibility that the guard staff forgot? There's a
3 possibility.

4 Q. Where would those clothes be held?

5 A. The cell right next door.

6 Q. So it's not a secret where the clothes are at?

7 A. No, sir.

8 Q. So then as the DBS, if the detainee--and we'll go with
9 various hypotheticals, okay, and you----

10 A. Yes, sir.

11 Q. ---- can tell me what you'd do. If the clothes were
12 actually in the feed tray and the detainee refused to put those on, -
13 ---

14 A. Yes, sir.

15 Q. ---- what would you do?

16 A. As the DBS?

17 Q. Uh-huh.

18 A. "Put your clothes on," as I'm conducting count.

19 Q. And if the detainee doesn't do that, what do you do?

20 A. Most likely what I'm going to do is tell him to put his
21 clothes on but I'm conducting count. Nothing's supposed to interrupt
22 count. Count starts and goes to completion, and then I'd go back and
23 address it with him, but I'm not going to interrupt my count.

1 Q. Okay, so you don't interrupt your count, you complete your
2 count, and you come back to the detainee still standing there naked,
3 what do you do?

4 A. "I told you to cover up. What's the deal? Why haven't you
5 covered up?" That's basically how I'm going to address that.

6 Q. And would this be something that you would see as a
7 disciplinary report?

8 A. No; that's--a DBS to a prisoner, they have the availability
9 to address certain issues and make on-the-spot corrections, not
10 necessarily any type of paperwork needs to be written, and in that
11 case I didn't really see why--PFC Manning didn't--he didn't refuse.
12 He didn't become argumentative, so I don't really see a need for a
13 disciplinary report.

14 Q. All right, so in my hypothetical, the detainee's refusing,
15 so would you give a disciplinary report for that?

16 A. If they're refusing, yes.

17 Q. Now if the detainee does, in fact, follow your directive,
18 so you do the on-the-spot correction, would you do an adverse spot
19 evaluation?

20 A. Not in conjunction with. If they're getting--if they're
21 getting a disciplinary report, I'm also going to annotate on their
22 hard card that a--same detainee is getting a disciplinary report for
23 this action.

1 Q. I'm sorry. I'm saying in the--now in the event that the
2 detainee complies, so you're not doing the disciplinary report
3 because you did the on-the-spot correction, ----

4 A. Okay.

5 Q. ---- do you put in an adverse spot evaluation?

6 A. I probably wouldn't at most.

7 Q. Why not?

8 A. I'd probably write it on the hard card and that was it.

9 Q. And then the hard card would be what?

10 A. A "hard card" is the prisoner detainee's information, just
11 maybe a few charges written on there; the articles that they're
12 facing; what cell they're housed in; their photograph; and then
13 entries on the back that basically just kind of on-the-spot
14 corrections that they've had while they've been in the facility.

15 Q. Okay. So at the very least you would expect to see some
16 notation on the hard card of this incident if the detainee was doing
17 something that he shouldn't be doing.

18 A. I don't know. Like I said, not all the time. You know, if
19 I was in that scenario and I was doing count and somebody wasn't
20 covered up, I'd tell them to cover up. As long as they did so, I'd
21 move on with the day. I wouldn't see a reason to address it. Simple
22 mistake is the way I would see that.

23 Q. Standing naked was a simple mistake.

1 A. Maybe the individual wasn't told that he was supposed to be
2 covered up. Of course, I'm going to address it with the guard staff,
3 that's more than a mistake with them, but not the detainee's fault.

4 Q. All right, so then in this instance now, what you know is
5 that he was standing there naked and you know Staff Sergeant Terry
6 was the DBS and what--did you address this now with Staff Sergeant
7 Terry at all?

8 A. He brought it to me as soon as I came in that morning.

9 Q. And what exactly did he tell you?

10 A. He said, basically, you know, "Good morning. I've got to
11 tell you about an incident," just "it might come up," and "when I was
12 doing count this morning, I kicked off count pretty quick." I
13 remember him telling me that it was like he had pretty much sounded
14 reveille; commenced counting; and he said by the time he went through
15 Special Quarters, PFC Manning wasn't dressed. He was standing there
16 naked. He told him to cover up, moved on with count, and that was
17 basically it.

18 Q. Did he tell you that he went back to see whether or not PFC
19 Manning ----

20 A. He didn't.

21 Q. ---- covered up?

22 A. No, sir.

1 Q. Did he tell you that he went back to the brig staff and
2 said, "Why was Detainee Manning standing there naked?"

3 A. He didn't.

4 Q. Do you know if anything was done to document what happened
5 after he completed his count?

6 A. No, sir.

7 Q. Now obviously PFC Manning standing naked caused a lot of
8 attention to the brig.

9 A. It did.

10 Q. And you obviously, based upon your position, wanted to
11 address that to ensure that didn't happen again.

12 A. Yes.

13 Q. Do you recall how you did that?

14 A. I do not.

15 [The civilian defense counsel handed a document to the court
16 reporter. The court reporter marked the document as AE 438G and
17 handed it to the civilian defense counsel.]

18 CDC[MR. COOMBS]: I'm retrieving from the witness what has been
19 marked 438F and handing the witness what's been marked Appellate
20 Exhibit 430 [pause]--438G.

21 WIT: Thank you, sir.

1 Q. Now in this e-mail you say, "Gents, make sure he's not
2 standing naked at attention for evening count right before Taps. We
3 should be taking his panties right before he lays down", correct?
4 A. Yes, sir.
5 Q. Now in the video you referred to underwear as "Skivvies,"
6 right?
7 A. Yes, sir.
8 Q. Do Marines refer to male underwear as "panties"?
9 A. I have on different occasions.
10 Q. You refer to male underwear as "panties"?
11 A. Probably ever since recruit training; Skivvies, underwear,
12 panties. Don't use panties quite as often, but I have.
13 Q. So you don't believe "panties" refers to female
14 undergarments?
15 A. It may and it probably does, but I've always--I've always
16 used the phrase, "Get my panties in a bunch." "Don't get my panties
17 in a bunch" is what I tell the staff all the time, so I've used it
18 pretty regularly.
19 Q. Well how about we talk about how you used it in this
20 instance then.
21 A. Okay.

1 Q. When you're saying he should--"you should be taking his
2 panties right before he lays down," how are you using it in that
3 instance?

4 A. Just as I would Skivvies or underwear. Just choice of
5 word, sir; that's all that is.

6 Q. So no hidden meaning in the word?

7 A. No, sir, not at all.

8 Q. So the fact that this was going to pretty much all of your
9 lower enlisted----

10 A. They've actually other than the e-mail I'm sure on several
11 different occasions by word of mouth because I--like I said, I--on
12 numerous occasions, "Don't let me come in tomorrow and put my panties
13 in a bunch." I've referred to it towards myself, so, no, it wasn't
14 meant in any shape or fashion. Like I said, just as regular as
15 underwear, Skivvies, panties; just choice of word, sir.

16 Q. You knew that PFC Manning was gay, correct?

17 A. Yes, sir.

18 Q. And this wasn't intended to be a homophobic statement on
19 your part?

20 A. Not at all, sir; not at all.

21 Q. Would you agree with me that the statement's not very
22 professional in the setting that you made it?

23 A. I would agree, sir; yes.

1 Q. And why would you agree with that?

2 A. I just wanted to put out a quick e-mail; didn't really

3 think about my choice of words; understand that an incident took

4 place. Who knows what I had going on that day, but, no, I would

5 agree. It's probably not very professional.

6 Q. Now you believed at the time of essentially March, April

7 time frame of 2011 that MAX and POI was the correct status for PFC

8 Manning.

9 A. Between what time frame again, sir? I'm sorry.

10 Q. In the March and April time frame of----

11 A. Yes.

12 Q. ---- 2011.

13 A. Yes, sir.

14 Q. At that point you still believed MAX and POI was the

15 correct status for PFC Manning.

16 A. I do.

17 Q. And you told the defense that you, quote, truly believed

18 that given the right opportunity he probably would have harmed

19 himself, end quote.

20 A. Yes, sir.

21 Q. Do--did you believe that?

22 A. I did, sir.

1 Q. And that's why you were not going to give him the
2 opportunity to do so, correct?

3 A. Yes, sir.

4 Q. So you would say that the MAX and POI was done to ensure
5 that PFC Manning could not harm himself.

6 A. Yes.

7 Q. Are you aware of the status that he was held on when he
8 went to the JRCF?

9 A. I would presume that JRCF is after he left us?

10 Q. That is correct.

11 A. Okay. From my understanding, because I did look into it
12 just out of curiosity as to what they were going to put him as, he
13 was in medium custody.

14 Q. Did it surprise you that he didn't do anything to try to
15 harm himself?

16 A. It did. Every kind--every facility, though, kind of--I'm
17 not going to say runs their operation different, has certain
18 capabilities, I guess, so to speak. If they had the capability based
19 off of what they were seeing to have him medium custody, I think
20 that's fantastic that they were able to have him at that custody.
21 Our risk procedures and what we had in place, my recommendation, I
22 would not have done that. If I was placed on their staff, I would
23 have recommended otherwise.

1 Q. You would recommend keeping him on MAX and POI?

2 A. Yes, sir.

3 [The civilian defense counsel handed a document to the court
4 reporter. The court reporter marked the document as AE 438H and
5 handed it to the civilian defense counsel.]

6 CDC[MR. COOMBS]: I'm retrieving from the witness what's been
7 marked Appellate Exhibit 438G and handing the witness Appellate
8 Exhibit 438H.

9 WIT: Thank you, sir.

10 Q. Master Sergeant, I want to discuss the e-mail that Chief
11 Averhart received from Captain Haberland and then the responses that
12 you made, okay?

13 A. Yes, sir.

14 Q. Now you responded to Captain Haberland's questions on 1
15 December; is that correct?

16 A. I did, sir; yes.

17 Q. And from your memory, did you--do you know who Captain
18 Haberland is or was?

19 A. As I understand it and as I recall, he was the prosecution
20 that was handling the case when PFC Manning came to us.

21 Q. And why were you the one responding to Captain Haberland's
22 questions as opposed to Chief Averhart?

1 A. A lot of times, just part of my duties for the Brig OICs, I
2 would draft the response for the OIC. It just kind of entailed with
3 my duties and responsibilities. I would send it to the commanding
4 officer; they'd make whatever changes, last minute changes that they
5 needed; and then they would send it out under their name.

6 Q. Now let's look at, for a moment, the second question
7 submitted by Captain Haberland, and you can basically look at it on
8 page 2, towards the top. Captain Haberland, in this question, he
9 states, quote, Defense has made a request that PFC Manning's status
10 be reduced from POI to some other status where he's able to have more
11 time outside or workout in his cell, end quote.

12 Do you see that?

13 A. [Pause to review exhibit] Hold on a second, sir.

14 Q. Oh, not a problem.

15 A. [Pause to review exhibit] Okay, yes, sir.

16 Q. And Captain Haberland goes on to state, quote, Since the
17 defense has made the request to lower his status, it's something that
18 we have to at least address, end quote.

19 Do you see that?

20 A. [Pause to review exhibit] Yes, sir.

21 Q. And he concludes the question by stating that, quote, If
22 the recommendation of the brig personnel is to have him remain on POI

1 status, that is fine. We just need to have it addressed to the
2 defense counsel, end quote.

3 A. Yes, sir.

4 Q. Do you see that?

5 A. I do.

6 Q. Based upon this question and because you were the one
7 drafting the response, did you believe that the Army prosecutor was
8 asking you to remove PFC Manning from POI?

9 A. No, sir.

10 Q. Now Captain Haberland also asks for the sunshine logs;
11 that's down in question 3.

12 You see that?

13 A. I do, sir.

14 Q. And he states down in question 3, quote, The defense
15 counsel is concerned about PFC Manning's mental and physical health
16 in relation to his small amount of time outside.

17 A. I see it.

18 Q. And at this point, PFC Manning, as we know, was only
19 receiving 20 minutes of sunshine call?

20 A. You said December 1st?

21 Q. [Nodded head indicating an affirmative response.]

22 A. Yes, sir; that's correct.

1 Q. And that had been the case since his arrival on 29 July
2 2010.

3 A. Yes, sir.

4 Q. So at that point the 124 days between July 29th of 2010 to
5 December 1st, he'd only been given 20 minutes outside of his cell
6 each day.

7 A. Without seeing the logs, I'd have to say yes because that's
8 what he was supposed to get.

9 Q. And when he was on, as we know, on the outside rec call, he
10 remained in full restraints.

11 A. To my knowledge, yes.

12 Q. And on the inside rec call, he was in--still in handcuffs
13 but the leg irons were taken off of him.

14 A. Yes, sir.

15 Q. Now in Captain Haberland's question, did he take issue with
16 the fact that PFC Manning was only receiving 20 minutes of sunshine
17 call?

18 A. [Pause to review exhibit] If that question 3 is written by
19 Captain Haberland, then yes.

20 Q. He took issue with it?

21 A. If that's--if that's written by him; if that--if that first
22 statement and that's just because I'm not sure.

1 Q. How about I rephrase. Based upon the question, did you
2 believe that the Army prosecutor was asking you to give PFC Manning
3 more recreation time?

4 A. No; no, sir.

5 Q. And, in fact, what he says is, quote, In order to combat
6 any potential Article 13 issues, I would like to get a copy of the
7 logs that show when PFC Manning went outside and how long he stayed
8 there, end quote.

9 A. Yes, sir.

10 CDC[MR. COOMBS]: Retrieving Appellate Exhibit 438G from the
11 witness--excuse me, 438H.

12 Q. I just want to cover a couple of things on direct that you
13 said just so that I understand your testimony, okay?

14 A. Yes, sir.

15 Q. You said that for PFC Manning's intake, he received, as you
16 know, a "5" on the intake, correct?

17 A. You're talking about the numbers as far as intake
18 paperwork. [Pause.]

19 Q. I know it's a long time ago, so how about I rephrase it
20 like this----

21 A. No; I just--I just looked it up. I saw the intake
22 paperwork the other day, and what was penned in was actually

1 incorrect. I checked CORMIS before coming to the hearing, and the
2 factor to receive MAX is "12." He actually had a "10."

3 Q. From the CORMIS he had a "10"?

4 A. Yes, sir.

5 Q. All right, so----

6 A. It was entered incorrectly on the paperwork.

7 Q. So the "5" that was written and signed was incorrect. The
8 CORMIS that was actually, I guess, typed into CORMIS was correct?

9 A. Yes, sir.

10 Q. Well regardless, I guess, of whether it's a "5" or a "10,"
11 it was lower than the normal "12" required?

12 A. Yes, sir.

13 Q. And you said that that's when the DBS overrode the normal
14 point count that would be required.

15 A. Yes, sir.

16 Q. And you said that HQ--Headquarters, Marine Corps gets a
17 ping at that point because they ask for the justification to override
18 it.

19 A. They do.

20 Q. And did that happen in this case?

21 A. It's hard to remember. I'm sure that they did, just with
22 the na--just with the nature of it, but the justification was
23 probably just simply an entry in the block in CORMIS justifying a

1 reason to change it to MAX; and in this case, if I remember
2 correctly, it was changed because he was placed into Suicide Risk.

3 Q. So when you say you send a justification you get pinged, is
4 Headquarters, Marine Corps second-guessing the brig at all or are
5 they just simply saying just tell us why?

6 A. No. The analyst that looks over the system, she has the
7 system set up for anything that's out of the ordinary, when a
8 facility does something, so that way she can make sure it's not a
9 mistake, so it's just basically an entry that either isn't logged--
10 for example, paperwork comes in on a victim-witness, but the, you
11 know, the document it says that we've received it but nothing was
12 entered. She'll get a ping on that. Well where's, you know, why is
13 nothing entered in here? Same thing with this. If something's
14 overridden, she's going to get a hit that there was no justification
15 written in the block or that it was just simply overridden.

16 Q. Okay. And I guess once she gets the justification, there's
17 no follow-up from her?

18 A. No, sir.

19 Q. And have you had, in your experience, detainees from sister
20 services before?

21 A. I have, sir.

22 Q. And you said that right from the beginning they get kind of
23 told the rank structure and whatnot at the brig.

1 A. Yes, sir, to include--we have a chart in there, in the
2 Receiving and Release area of all four branches of service, your
3 typical that you see with all the enlisted and officer rank
4 structure.

5 Q. And you would agree with me that the terminology in the
6 Marine Corps is different than the terminology, say, in the Army.

7 A. It is.

8 Q. And obviously the ranks are different as well.

9 A. We're closer to the Army than we are the Navy and
10 Department of the Navy; go figure.

11 Q. Now you also said that there is a test on the indoc
12 procedures basically, once you----

13 A. There is, sir.

14 Q. And that test doesn't go into every specific right or
15 entitlement of a detainee, correct?

16 A. I don't remember exactly what it entails. We try to cover
17 all general bases of the facility.

18 Q. So it's a generalized test.

19 A. Yes, sir.

20 Q. Do you recall how many questions on that intake exam?

21 A. It's either 50 or 100. I can't remember.

22 Q. All right.

1 With regards to PFC Manning, you said you--and I wrote this
2 down, you, quote, never had a detainee not want to talk to you as
3 much as PFC Manning.

4 A. Yes.

5 Q. So in your 21-plus years of experience, PFC Manning was
6 the, I guess, most noncommunicative detainee you've ever had?

7 A. Not the only one but definitely one of.

8 Q. And do you know why that was never raised with the mental
9 health professionals?

10 A. I wouldn't say it was so much specifically me, but the
11 staff as a whole, because it was--it was brought to their attention
12 that he just, for the most part, generally doesn't talk to us.

13 Q. And you said that that was true of also the brig staff,
14 right?

15 A. Yes.

16 Q. And would you agree with me that the brig guards are not
17 there to have conversations with detainees?

18 A. Correct.

19 Q. In fact, they--when they talk to a detainee, it's normally
20 to give them something to do or to tell them information.

21 A. Yes, but your brig guard is your brig guard. They're going
22 to talk to prisoners, detainees about sports and other stuff that's
23 going on because that's what guards do. As long as it's not crossing

1 the line of fraternization, that's fine, just as long as it's real
2 basic.

3 Q. Would it surprise you if brig guards testified that they
4 don't engage in conversations about sports or other things with
5 detainees?

6 A. It wouldn't surprise me.

7 Q. And why is that?

8 A. I've moved up through the rank structure, sir. I know how
9 we've all generally conducted business. You stay on a professional
10 level. You keep that barrier of fraternization, but there's nothing
11 wrong with talking to a prisoner or detainee as a guard. No; you
12 don't get in their personal lives, you don't talk about their case or
13 anything like that, but as a guard, you're sitting in a dorm or in an
14 area 24/7, sometimes watching them sleep, and there's going to be
15 human interaction and conversation, like I said, just as long as it
16 doesn't cross that line.

17 Q. And from your testimony, even with the brig staff, PFC
18 Manning was noncommunicative?

19 A. They had never told me about any instances where he did
20 talk about anything.

21 Q. Did you ever express your concerns of PFC Manning being the
22 detainee that would talk to you the least of any detainee that you
23 ever had directly with PFC Manning?

1 A. Can--I'm sorry. Can you say that again?

2 Q. It's a longer question; I'm sorry.

3 A. Okay.

4 Q. Did you ever express to PFC Manning your concern about his
5 lack of conversation with you?

6 A. No, I did not, sir.

7 Q. And can you tell me why?

8 A. Didn't see really where it was pertinent that I needed to
9 address anything specifically to him; that was his--what his
10 counselor was for. I used my counterparts in the facility--and when
11 I say my "counterparts," my chiefs--as much as possible, you know,
12 just to--just to lessen my workload. Could I have taken further
13 steps? You know, that's speculation. Of course I could have. In
14 what means? You know, I really don't know at this point because it's
15 after the fact, but probably could have.

16 Q. Did you ever, based upon this concern, approach Captain
17 Hocter or Colonel Malone and say, "Hey, I've got a concern. In my 21
18 years, PFC Manning is speaking to me the least of any detainee"?

19 A. Not those two. I did address it with Colonel Russell.

20 Q. So Colonel Russell who saw PFC Manning twice in April 2011,
21 you addressed it with him?

22 A. By that time when Colonel Russell had come in, it was just--
23 -it was another new face. I wanted to sit down and explain with him

1 what had been going on. I didn't know what kind of transition there
2 was from Colonel Malone to Colonel Russell, so I wanted to be able to
3 provide some kind of input. You know, with Captain Hocter to Colonel
4 Malone, there was a transition; didn't seem--didn't really seem
5 appropriate for me to really say anything, but that wasn't really the
6 case when Colonel Russell came in, and I didn't know how long Colonel
7 Russell was going to be there.

8 Q. So you weren't aware that Colonel Russell was just covering
9 for Colonel Malone?

10 A. I did not.

11 Q. So----

12 A. I--well----

13 Q. Did you see that Colonel Russell saw him, I believe, on the
14 first week of April; then Colonel Malone saw him at the second week
15 of April; and then back to Colonel Russell; is that your memory?

16 A. It's possible.

17 Q. So what did you tell Colonel Russell?

18 A. There was actually a few staff members in there when I
19 talked to him. Him and I just basically one-on-one that we--that I
20 had some concerns but more so that his lack of communication really
21 gave us an uncomfortable feeling.

22 Q. Who else was in there? You said there were other staff?

1 A. Later on, I want to say Staff Sergeant Jordan had come in;
2 Master Sergeant Blenis had come in. I think Staff Sergeant Buck was
3 in there for a time frame, and I think that's probably it.

4 Q. And were they----

5 A. Oh, and----

6 Q. ---- also telling----

7 A. ---- Gunnery Sergeant Fuller was in there too.

8 Q. Okay. And were they also telling Lieutenant Colonel
9 Russell their observations of PFC Manning?

10 A. Yes, sir.

11 Q. And was those observations, I guess, consistent with yours?

12 A. They were, sometimes more, often more, because, you know,
13 Gunny Fuller was usually the senior member of the C&A board, so he
14 had a little bit more interaction. Master Sergeant Blenis obviously
15 plenty of interaction, so he had--he had a lot more to tell Colonel
16 Russell. From Staff Sergeant Jordan's standpoint, he wasn't his
17 counselor or anything like that, it was just more or less Staff
18 Sergeant Jordan was used as more as an Army liaison, so his
19 conversations with PFC Manning were probably pretty limited.

20 Q. Now when you're having these conversations with Colonel
21 Russell, is he then backbriefing you after speaking with PFC Manning?

22 A. He is.

1 Q. And is he telling you that what you guys are telling him is
2 not what he's seeing from PFC Manning?

3 A. No. I don't remember the second time I spoke with him, but
4 the first time he visited with him, he had told us that we had valid
5 cause for concern.

6 Q. So after speaking with PFC Manning, he told you that?

7 A. He did.

8 Q. Would you be surprised if he was saying, in fact, that the
9 account that he received from the brig staff was inconsistent with
10 what he was seeing in PFC Manning?

11 A. I would.

12 Q. Now you had said that apparently in December, there was
13 some sort of conversation to take PFC Manning off of POI, possibly?

14 A. Yes, sir.

15 Q. And who was present for this conversation?

16 A. I talked to two staff members individually.

17 Q. Who was that?

18 A. I talked to Gunnery Sergeant Fuller on one occasion about
19 it, and then I also talked to Master Sergeant Blenis on a different
20 occasion about it.

21 Q. And when were these occasions?

22 A. I don't really recall when. We just simply--it had kind of
23 come up that--what's the possibility, I think that was kind of like

1 the way it was presented to me from Gunnery Sergeant Fuller; what's
2 the possibility of kind of looking at his status in custody and it
3 possibly changing, and it sounded realistic, you know, what are we
4 looking at; let's review everything; let's make sure we're thorough,
5 if nothing more.

6 Q. And when--you had testified on direct that this was in
7 December. Is this still your memory now?

8 A. I would say it was somewhere in December; that's--you know,
9 sir, that's my best recollection. Could it have been maybe November,
10 yeah, possibly. I know that it was somewhere around the holidays.

11 Q. And, I guess, maybe you can help me, then, because I'm
12 having a tough time reconciling a couple things then.

13 A. Yes, sir.

14 Q. You said that PFC Manning was the worst communicator that
15 you had in your 21 years and he never really warmed up, other than
16 this--really this 18 January incident; and you also testified about
17 various odd behaviors that were documented. So what were you seeing
18 now that was saying to you we could take him off of POI?

19 A. When we--when we actually had that conversation, everything
20 kind of to that standpoint seemed, I'll use the word, routine.
21 Although his behavior did seem sporadic and odd, it was regular. You
22 know, he'd do something one day and then maybe go a couple of days
23 without doing it; do something again; always polite; low

1 conversational tone when talking to everybody; and I think it was
2 more so from the standpoint just looking at all of our prior
3 experience within the facilities that we've worked in, let's look how
4 long this individual's been on POI; is it appropriate to keep him
5 here; should we consider taking him off? All right, we talked about
6 it; let's consider it. You know, like I said, I don't really
7 remember the time frame or the actual nature of the conversation, but
8 I do remember it taking place.

9 Q. And I guess I'm still confused, then, when you testified
10 just a few minutes ago that you, quote, truly believed that given the
11 right opportunity he would harm himself, end quote, and that you also
12 said that if you were on the staff of the JRCF, you would be
13 recommending that he stay on MAX and POI.

14 Can you reconcile that for me?

15 A. Oh, yes, sir.

16 You know, that was all--all of our conversation was prior
17 to his outburst. The outburst made us all uncomfortable. It --
18 [pause] it kind of, I don't want to say, back to day one, but I guess
19 if I'm looking for a choice of words, it kind of put us back to day
20 one, starting fresh again. We didn't--none of us saw that outburst
21 coming; don't even really believe that there was a reason or cause
22 for it nor do we understand the reason or cause for it. It took
23 place and kind of put all of our mindset in a different place.

1 Q. Well you had said that, and I wanted to see if that was you
2 or somebody else, that you relieved the guards that were with PFC
3 Manning on 18 January.

4 A. I don't know if I actually relieved them. When I came in,
5 I wanted the statements as soon as possible, so either I asked--and I
6 don't remember which--either I asked if they were writing their
7 statements already, and if they weren't, get them relieved so they
8 can write their statements.

9 Q. Would it surprise you if the DBS testified that he made the
10 determination to relieve him, along with Gunnery Sergeant Fuller,
11 because he believed that there was some sort of anxiety caused by the
12 two guards to PFC Manning?

13 A. That would surprise me. Yeah, that would surprise me.

14 Q. Now you also testified about a--the C&A board, the brig
15 Form 4200, right?

16 A. I did, sir.

17 Q. And you said that that form was not used for a period of
18 time until January.

19 A. Somewhere around there, yes, sir.

20 Q. And why not?

21 A. It wasn't something that is required or that was required
22 by SECNAV; still is not.

23 Q. Well why did you start using it then?

1 A. It was just something to better our practices; to be more
2 thorough. I don't remember actually what sparked it, but it was more
3 so just from the standpoint of documentation, you know, just improve
4 our documentation process.

5 Q. So, I guess, prior to improving your documentation process,
6 how was the C&A board's recommendations captured?

7 A. If I recall correctly, it was just basically a sheet that
8 said what their vote was and there was really not much to it. It
9 was--it was very general. There wasn't a lot of--a lot of input; the
10 factors weren't there of things that were being considered, and that
11 was just one of the things that we identified. And, you know, it
12 was--it was probably in conjunction with him being reviewed so often
13 and being under so much scrutiny, because our--it was our decision
14 all the time of, okay, you guys are recommending this. Why? You
15 know what? Let's put it in writing.

16 Q. So, I guess, prior to that it wasn't in writing.

17 A. No, sir.

18 Q. You also testified that with regards to PFC Manning, that
19 there was sometimes somebody in a cell next to him?

20 A. I can only think of one occasion where somebody was right
21 next to him; and then another occasion where somebody was, like, two
22 cells down from him.

1 Q. Well let's talk about the one occasion that you recall with
2 someone next to him.

3 A. Yes.

4 Q. How long was that person next to him?

5 A. Not very. I don't--I don't even really recall why we had
6 him over there, and they carried on some conversation, because I
7 talked to the individual, you know, that was next to PFC Manning.

8 The other--the other one that was two cells down, I don't
9 remember too much conversation.

10 Q. Would it surprise you if others have testified that no one
11 was ever on the left or right of PFC Manning?

12 A. No one was on his left, but there was individuals to his
13 right, so that would surprise me that somebody testified to that.

14 Q. Okay, and it would surprise you because you recall at least
15 one person being to his right at one time.

16 A. Yes.

17 Q. And would it surprise you that others have testified that
18 if you didn't have someone to your left or right, you were not
19 permitted to talk to him?

20 A. That was generally the outlook of the facility to maintain
21 good order and discipline because we didn't want individuals yelling
22 back and forth, but they could carry on a low conversational tone.
23 You know, Special Quarters is self-contained. If I'm in one cell and

1 you're in the cell next to me, there's no reason to yell, even two
2 cells down; moderate conversation and it wouldn't be a problem. The
3 only individuals that weren't allowed to talk were, you know, loss of
4 privileges, disciplinary seg, someone--individuals that had their
5 privileges taken away.

6 Q. So I'll repeat this question, then. Would it surprise you
7 if others testified that if someone was not to your immediate left or
8 right you were not permitted to talk to him?

9 A. It would not surprise me.

10 Q. Now you had also testified that after 10 December--or are
11 you aware that after 10 December, PFC Manning was then given 1 hour
12 of rec call, correct?

13 A. I don't know if that was the time frame. You said "1
14 December"?

15 Q. Excuse me, 10 December.

16 A. Or 10 December. Do you have that documented somewhere? I
17 don't recall that that was the date.

18 Q. Why don't I just ask you: Do you know that his sunshine
19 call was turned into 1 hour of rec call at some point?

20 A. I remember it was, yes.

21 Q. Do you recall why?

22 A. I don't remember the reasoning behind it. I know that we
23 all had collectively around that time frame talked about increasing

1 his activity, and that was the next step to change it from 20 minutes
2 to an hour.

3 Q. And when you say "we all," who is that?

4 A. Collectively, the brig staff. I want to say all the
5 department heads that were involved. We even talked to some DBSs;
6 got recommendations from everybody.

7 Q. You had also testified on direct that as a detainee, you
8 have to follow the orders of the guard staff no questions asked.

9 A. Yes, sir.

10 Q. So if a guard staff had given an order to PFC Manning
11 basically to stand naked, would you expect that PFC Manning would
12 follow that order no questions asked?

13 A. I would expect that.

14 [Pause]

15 CDC[MR. COOMBS]: Thank you, Master Sergeant Papakie. That--I
16 believe that's all the questions I have at this time.

17 WIT: Thank you, sir.

18 MJ: Redirect?

19 ATC[CPT VON ELTEN]: Your Honor, the United States requests we
20 break for lunch.

21 MJ: All right, is it a lengthy redirect that you're going to
22 have?

23 ATC[CPT VON ELTEN]: No, Your Honor.

1 MJ: Why don't we finish the re--why don't we finish with this
2 witness and then we'll go to lunch; does that sound okay to
3 everybody?

4 CDC[MR. COOMBS]: Yes, Your Honor.

5 ATC[CPT VON ELTEN]: Yes, Your Honor.

6 MJ: Proceed.

7 **REDIRECT EXAMINATION**

8 **Questions by the assistant trial counsel [CPT VON ELTEN]:**

9 Q. Master Sergeant, were any leaders at the brig reprimanded
10 for Captain Webb's suicide?

11 A. No, sir.

12 Q. You just testified that C&A boards prior to January weren't
13 documented. Do you remember if they were documented in CORMIS?

14 A. They were, sir.

15 Q. Do you know where in CORMIS?

16 A. I don't remember the actual page. It's been a while since
17 I've looked at CORMIS, but there's a specific spot for it.

18 Q. When were detainees given rules and regulations?

19 A. Upon their entry into the facility. They received that
20 document in Receiving and Release.

21 Q. Was that a complete copy of every rule and regulation?

22 A. It was, sir.

23 Q. And where would a detainee find that?

1 A. You mean, where would they find it? Um----

2 Q. Where would he keep it?

3 A. It would stay in the cell.

4 Q. How were psychiatric recommendations considered?

5 A. When you say how were they considered, I----

6 Q. Were they reviewed; were they never looked at?

7 A. Oh, no, they were always considered.

8 Q. Why?

9 A. That was---that was our source, an additional source for the
10 C&A boards; that's something that we're always encouraged to do, to
11 get output from any outside party that has involvement with the
12 prisoner in relation to Programs or whatever they're attending;
13 whoever's coming to visit them.

14 Q. When would Captain Hocter conduct rounds at the brig?

15 A. I couldn't put a time stamp on it, sir. It was sporadic.
16 I want to say mostly on Fridays.

17 Q. What time on Friday?

18 A. Probably the end of the day.

19 Q. How often did PFC Manning explain his erratic behavior?

20 A. How did he explain it?

21 Q. How often did he explain it?

22 A. He never explained it.

1 Q. What were you looking for--what would you--what did you
2 need to see to remove PFC Manning from Prevention of Injury?
3 A. I use the word "normal" or "nothing." I needed to see
4 nothing. I needed to see a routine every day that was not sporadic;
5 that was not out of the ordinary; nothing.
6 Q. How would his communication be a part of that?
7 A. It would be huge. If the individual started talking to me,
8 had regular conversations, I would probably be--I'd probably be the
9 first one, before the C&A board even acted, to recommend to the CO
10 to----
11 Q. Why is communication so important?
12 A. It's important in a brig, just across the board. When you
13 don't have prisoners and detainees that are talking to you, it's a
14 cause for concern. They could be plotting or planning anything, and
15 in a jail, in my experience, an individual that's not talking,
16 keeping to themselves, they're usually up to something.
17 ATC[CPT VON ELTEN]: Thank you.
18 CDC[MR. COOMBS]: No recross,----
19 MJ: Redirect [sic]?
20 CDC[MR. COOMBS]: ---- Your Honor.

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Q. Master Sergeant, and am I pronouncing--how do I pronounce your name correctly?

Q. Papakie, okay.

Yes, ma'am.

A. When they come in the facility, ma'am, it's Lance Corporal or Corporal Such and Such, that's my rank structure. You'll address me as Corporal. They go through the process of how to answer a question.

A. They explain that questions are answered with yes or no, that they will acknowledge when they are told to do something "aye, aye" and then followed by their rank structure.

A. Yes, ma'am.

1 Q. Okay. [Pause] What is your understanding of what the--
2 what--well, first of all, is there a difference between recreation
3 call and sunshine call?

4 A. There is, ma'am. For the most part, with the sunshine
5 call, it was just limited time exposure outside. It's more so the
6 time frame than anything else. As far as the restrictions on what
7 they can do, there really isn't any. You know, the individual that
8 we're talking about, PFC Manning, he was in restraints while he was
9 outside but in handcuffs inside. Whether it was sunshine call or
10 recreation call, it's basically the same activities. One's----

11 Q. Does----

12 A. ---- just extended.

13 Q. Does the SECNAV Instruction contain any minimal amount of
14 sunshine rec call per prisoner?

15 A. It just says that they will get an hour of recreation. It
16 doesn't specifically say "call." It just says "recreation."

17 Q. And what does recreation include?

18 A. Recreation includes anything from TV to reading, you know,
19 outdoor activities, the indoor activities that we provide, but, like
20 I said, also--also TV and reading is included in that.

21 Q. [Pause] What connection is there between a lack of
22 communication and a potential to injure some--injure yourself?

1 A. I want to make sure I understand the question, ma'am.

2 You're asking me----

3 Q. Now I understand that you don't like it because they're up
4 to something, but what is the--is there a correlation between lack of
5 communication and an intent to injure yourself?

6 A. No. When I say a connection between lack of communication
7 and intent--okay, I see what you're asking. I apologize. Lack of
8 communication, just, you know, simply from the standpoint of what
9 we're taught throughout our careers as far as suicide and taking the
10 proper precautions. You know, it's something that we all as a staff
11 kind of collectively talked about. When somebody's withdrawn like
12 that, they're not talking, it's a major cause for concern. It's a--
13 you know, it's one of the indicators of suicidal behavior, and that's
14 something that I know that we all as a staff collectively talked
15 about, but even more so myself. You know, it was--it was--he was
16 removed from just kind of any type of human interaction, as far as
17 him and I or him and the other staff members. It just seemed like if
18 he could have not had the interaction with us, he wouldn't have, and
19 that really bothered me.

20 Q. If you were concerned about PFC Manning communicating more
21 or the brig staff, why weren't more prisoners put near him so he
22 could talk to them?

1 A. I don't remember the actual reason why. I know for the
2 most part because of what charges he was facing, the reasoning behind
3 his trial, we had some concerns with anybody really being next to him
4 and trying to get information out of him about, you know, his alleged
5 offenses.

6 Q. [Pause] You've testified you're in--you've had 21 years of
7 corrections experience. What's the longest you've ever seen an
8 inmate--or a prisoner on POI for a straight length of time other than
9 this case?

10 A. I'd probably say a year, ma'am.

11 Q. Is that a frequent occurrence?

12 A. Not very frequent. I just remember two individuals when I
13 was stationed at Camp Lejeune, but one more so specifically. For the
14 entire time I worked in Special Quarters, he went back and forth from
15 SR to POI and back and forth and back and forth.

16 Q. Were the circumstances similar to this case?

17 A. Pretty close. He was--he was pretty withdrawn. It seemed
18 like the only prisoner he talked to was another one that was going to
19 Fort Leavenworth with him, and that was the only one he wanted to
20 talk to. He wouldn't talk to the staff at all.

21 Q. The video that we saw on the 18th of January as well as
22 your statement on the 2nd of March indicate that on both of those
23 occasions PFC Manning was talking to the brig staff about his desire

1 to come off POI. Before the 18th of January, did he give any
2 indication that he wanted to come off POI?

3 A. [Pause] I'm going to say that he did. I don't recall, and
4 the reason I say that is because I know he had had--he had had
5 conversations about what POI was and why he was on that status with
6 Master Sergeant Blenis; don't really remember the nature of the
7 conversation though.

8 Q. [Pause] Did the Quantico Brig--after--how long were you at
9 Quantico; were you there until it closed?

10 A. I was, ma'am.

11 Q. Did the brig get any kind of guidance from Headquarters,
12 Marine Corps after PFC Manning left about going from--having Suicide
13 Risk and POI potentially at a medium status?

14 A. We did, ma'am. I think we were the only ones to receive
15 that. I don't remember what form that it came down in. I think it
16 was a memorandum that we received from Headquarters kind of
17 realigning how we conducted business and--because it was pretty much
18 in our facility, if they were POI or SR, they were understood as a
19 MAX. When we received guidance from Headquarters, Marine Corps after
20 he had left, we had our first ever in my years of corrections a
21 Suicide Risk and a POI that was medium custody.

22 Q. How did that work out?

23 A. It worked. There was no problems, ma'am.

1 Q. So how--just how did the facility do at SR POI at that
2 point in medium custody, because the medium custodies all live on
3 the--in the same special housing unit, right?

4 A. Yes, ma'am.

5 Q. So what was different?

6 A. The only thing that we really did to make sure that we took
7 precautions was we tried to clear the hallways when the individual
8 was moving about. That was really the only--of course, you know,
9 with medium custody, they didn't walk around with restraints on and
10 stuff like that, but we still did clear the hallways to make sure
11 that there was no interaction with those individuals.

12 Q. Did they go to the group recreation call and the group chow
13 and the other things that----

14 A. They were still separated.

15 Q. They were still separated,----

16 A. Yes.

17 Q. ---- okay.

18 What is a "BUPERS Instruction"?

19 A. The "BUPERS Instruction," ma'am, was published, I'm going
20 to say the publish date by the time we got it was somewhere in early
21 2011, and it's basically the new corrections manual. It doesn't
22 supersede SECNAV; it's actually underneath SECNAV. It's a document
23 that pretty much tells the same thing; it's just if we have immediate

1 changes that need to take place, we can make a quicker change to that
2 document, whereas SECNAV would be more towards our DoD instruction
3 and remain real general.

4 Q. Was there a BUPERS Instruction before the 29th of March,
5 2011, or was that the first one that ever----

6 A. That was the first one ever.

7 Q. It was the first one ever.

8 A. Yes, ma'am.

9 Q. Okay. Did you or anyone else on the brig staff ever
10 approach Dr. Hocter or Dr. Malone to have a conversation about, "Hey,
11 you're recommending that PFC Manning come off POI status consistently
12 week after week and we're not seeing those things or any reasons to
13 do that; why the disconnect?"

14 A. I don't remember when he left. I know that Chief Warrant
15 Officer Averhart did have those conversations with him. I was not
16 included, you know, during their meetings; did not sit in on them so
17 I don't know the nature of the conversation, but I know just from
18 Chief Warrant Officer Averhart relaying it--relaying the information
19 to me that they did take place. Basically, you know, the standpoint
20 from Captain Hocter was basically that he was going to continue to
21 provide the paperwork that he provided and that was it. I don't
22 really remember any conversations with Colonel Malone, ma'am.

1 Q. Did Chief Averhart ever tell you anything that Colonel
2 Hocter said about a basis for taking him off of POI?

3 A. I do not recall that, ma'am, no.

4 Q. You testified earlier that you believed that the brig
5 didn't have enough mental health support. Was that true before PFC
6 Manning came or was that the result of PFC Manning's arrival?

7 A. I think it was more so the result of his arrival. I think
8 we felt that we were getting the support needed but it seemed like
9 there were so many outside, I'll say, eyes or interests in his
10 status, I mean, everything that was going on with him that we wanted
11 it more routine to make sure that we were just conducting business
12 appropriately, ma'am.

13 Q. Do you know if Chief Averhart ever tried to get more
14 psychiatric support for the brig when--during his tenure with PFC
15 Manning's confinement?

16 A. Yes, ma'am. Again, not a conversation that I was included
17 in, but I know that he had the conversation with the battalion
18 commander and Colonel Choike may or may not have been there, but I
19 know that him and Colonel Oltman--Chief Warrant Officer Averhart and
20 Colonel Oltman had had that conversation about what they could do.

21 Q. [Pause] I'm looking at your BUPERS Instruction and I see in
22 paragraph 6, anyway, and on page--what is it here--18 of 46, at least
23 in the printout,----

1 A. Yes, ma'am.

2 Q. ---- it talks about segregated prisoners, and it says, "A
3 credentialed mental health provider must personally interview and
4 provide a written report on any prisoner remaining in Special
5 Quarters over 30 days. If segregation continues beyond 30 days, a
6 credentialed mental health provider shall make an assessment at least
7 every 3 months, or more frequently if prescribed in the brig medical
8 officer/psychiatrist/clinical services director. Prisoners in
9 Special Quarters may develop symptoms of acute anxiety or other
10 mental problems; regular psychological assessment helps ensure the
11 mental health of anyone segregated over 30 days."

12 In your 21 years of training, did you ever receive any
13 training that there may be--that the conditions of special housing in
14 and of itself may be a cause for anxiety and what this SECNAV
15 Instruction says?

16 A. We did. I've had training over the years about it. There
17 really wasn't anything, I'll say, specific, but it was more so that
18 when individuals were housed in Special Quarters for whatever reason
19 make sure that--and I'm not going to say from the mental health
20 standpoint--but it was make sure that the chaplains are coming to see
21 them; make sure that their commands are coming to see them; make sure
22 that they have visitors; why don't they have visitors? You know,
23 their well-being was definitely something that we paid attention to,

1 just because being in Special Quarters like that can--it can weigh
2 heavily on the mind.

3 Q. Did the brig staff ever consider whether there was any
4 correlation with what happened on the 18th of January of 2011 and,
5 you know, the anxiety and the length of time on POI at that point?

6 A. I'm sure we talked about it could have been a possibility.
7 It definitely could have been a possibility. I'm not going to say
8 that it wasn't, but it was really, I guess from the standpoint of
9 where he was housed, ma'am, and how he was housed, everybody was kind
10 of in Special Quarters, I'm going to say, the same. Everybody had
11 their own individual cell. Yeah, was his interaction between other
12 prisoners and detainees limited? It was, but everybody else was
13 still kind of housed the same way; nothing was really different from
14 any other prisoner and detainee.

15 Q. And was there ever an engagement after the 18th of January
16 with either Colonel Hocter or Colonel Malone to discuss why --at
17 least why--what the psychiatric--what the mental health professionals
18 thought about the 18 January 11 incident?

19 A. I do remember a conversation that did take place. I don't
20 remember who--remember who it was with, but it was just basically
21 about his confinement conditions; what he's facing on a day-to-day
22 basis, as far as how that can weigh heavily on him. You know, we
23 understood it. We were kind of limited to what we could do to change

1 any of it, but more so just tried more interaction, you know, because
2 that's all we could really do was interact more. I know I sent--and
3 it's not normally routine--I sent the security chief, other than
4 myself and Programs, I sent the security chief through Special
5 Quarters kind of on a regular basis. I had Staff Sergeant Buck go
6 down, "Hey, I already made my rounds, but, you know, in a half hour,
7 could you go down and just kind of stroll through the prisoners, a
8 little interaction from you too." I figured anything could help.

9 Q. So back to my original question, there was a conversation
10 between the brig staff and mental health providers over the 18th----

11 A. There was. I'm sorry if I didn't answer it.

12 Q. That's okay.

13 A. There was.

14 Q. And what was said? I mean, what----

15 A. It was just basically from the standpoint of, you know,
16 increase your presence. When you go down there, it's not in and out.
17 Go down there and spend some time. You're not going down there and
18 signing a sheet and moving on. Take your time. You know, there was
19 an individual that was there that was there for--he was being retried
20 for a life sentence, and I always referred to him and how much time
21 we all used to spend with him. I said, "You know, just like when he
22 was here, go down there and spend time with each individual; try--

1 make it lengthy. I know it takes time out of your day, but that
2 could help things out a little bit."

3 MJ: Okay, any follow-up based on that?

4 ATC[CPT VON ELTEN]: No, Your Honor.

5 CDC[MR. COOMBS]: Yes, Your Honor.

6 **RECROSS-EXAMINATION**

7 **Questions by the civilian defense counsel [MR. COOMBS]:**

8 Q. When you had some that were in SR POI/MDI, medium detention
9 in,----

10 A. Yes, sir.

11 Q. ---- were they able to have a job in the facility because
12 they were MDI?

13 A. I don't recall. I would--[pause] I really don't remember.
14 I don't think so, but is it a possibility? I think that was one of
15 the reasons that we made them MDI so that there is that possibility.

16 Q. And were they able to have personal items in their cell?

17 A. No. If they were SR and POI, they still had everything
18 kind of removed; they just--their custody and the way they were
19 handled as far as restraints, that was identified differently. They
20 didn't have to walk around in the facility, you know, in full
21 restraints and didn't have to conduct rec call in full restraints or
22 handcuffs.

1 Q. And I know you didn't have to lock down the facility when
2 they moved.

3 A. Correct.

4 Q. But they would still do--what about chow? Would they have
5 to eat their chow in their cell or would they---

6 A. If memory serves me correct, they ate chow with--not with
7 everybody else but they went down with the general population.

8 Q. Okay. And then rec was still by themselves or was it at
9 the same time but they were separated from everyone?

10 A. I don't recall, sir.

11 Q. You had said that PFC Manning was like other detainees held
12 in Special Quarters, right?

13 A. Yes, sir.

14 Q. But unless the other detainees were MAX as well, they could
15 eat together for chow?

16 A. Correct.

17 Q. They could have jobs?

18 A. Yes.

19 MJ: Who are we talking about?

20 CDC[MR. COOMBS]: The other detainees in Special Quarters.

21 MJ: Okay.

22 WIT: Yes, sir.

1 Q. So these other detainees if they got a job, they could be
2 out of their cell doing their job?

3 A. Yes, sir.

4 Q. Obviously, then, they were not held in their cell 23 hours
5 a day.

6 A. No, I was referring to other detainees like him in a MAX
7 capacity status. You know, if there was somebody in there with the
8 same category status and custody, they conducted their daily routine
9 the same way that he did. It was no different. I didn't mean to
10 confuse,----

11 Q. All right----

12 A. ---- if I clarified that.

13 Q. Sure. So if the detainee was also a MAX POI detainee, ---
14 -

15 A. Yes.

16 Q. ---- they were held exactly the same way as PFC Manning.

17 A. Yes.

18 Q. Okay. And other than PFC Manning, did you have any other
19 MAX POI detainee for the length of time of his stay?

20 A. Not there; not at Quantico.

21 Q. During the time PFC Manning was there as a MAX POI--and
22 this may be unfair--if you say I can't answer it, that's fine.

23 A. I understand.

1 Q. Did you--what was the longest you had another detainee
2 other than Manning in MAX and POI?

3 A. Okay.

4 Q. So other than--so you had PFC Manning----

5 A. Uh-huh.

6 Q. ---- in MAX and POI the entire time he's there, for the
7 most part.

8 A. Okay.

9 Q. What was the longest you had another detainee also in MAX
10 and POI during the time PFC Manning was there?

11 A. Okay, so you're just strictly talking that facility during
12 his time frame.

13 Q. [Nodded head indicating an affirmative response.]

14 A. I would have to say maybe [pause] 2 weeks max.

15 CDC[MR. COOMBS]: All right, thank you.

16 WIT: Yes, sir.

17 MJ: All right, anything further that we need from Master
18 Sergeant Papakie?

19 ATC[CPT VON ELTEN]: No, Your Honor.

20 CDC[MR. COOMBS]: No, Your Honor.

21 [The witness was duly warned, permanently excused, and withdrew from
22 the courtroom.]

1 MJ: Is there anything else we need to address before we take a
2 lunch hour?

3 ATC[CPT VON ELTEN]: No, ma'am. The United States recommends
4 that we reconvene at 1400, 2 p.m.

5 CDC[MR. COOMBS]: If we could do 1420, if that's possible, Your
6 Honor?

7 MJ: 1420? Why don't we go ahead and do 1420.

8 So court will be in recess, then, until 1420.

9 **[The Article 39(a) session recessed at 1300, 5 December 2012.]**

10 **[The Article 39(a) session was called to order at 1426, 5 December**
11 **2012.]**

12 MJ: This Article 39(a) session is called to order. Let the
13 record reflect all parties present when the court last recessed are
14 again present in court.

15 Major--Captain Von Elten?

16 ATC[CPT VON ELTEN]: United States calls Chief Warrant Officer 5
17 Abel Galaviz.

18 **[END OF PAGE]**

1 CHIEF WARRANT OFFICER 5 ABEL GALAVIZ, U.S. Marine Corps, was called
2 as a witness for the prosecution, was sworn, and testified as
3 follows:

4 DIRECT EXAMINATION

5 Questions by the assistant trial counsel [CPT VON ELTEN]:

6 Q. And for the record, you're Chief Warrant Officer 5 Abel
7 Galaviz, head of Marine corrections, stationed in Washington, D.C.?

8 A. Correct, sir.

9 Q. Thank you.

10 Chief Warrant Officer Galaviz, how long have you been a
11 Marine?

12 A. Twenty-nine years, sir.

13 Q. And how long have you worked in corrections during that
14 time?

15 A. Twenty-six out of those twenty-nine years.

16 Q. What positions have you held in the correctional field?

17 A. As an enlisted Marine, I worked one-on-one with the
18 supervision of those confined; worked my way up to become a warrant
19 officer and took leadership responsibilities in billets supporting
20 brig from the administrative officer, operations officer, brig
21 officer, and the commanding officer as well.

22 Q. What is your current position?

1 A. I'm the head of Marine corrections with responsibilities to
2 administer the Corrections Program in the Marine Corps.

3 Q. And what does that entail?

4 A. I serve as the Marine Corps's point of contact at the DoD
5 level for corrections matters. I assist in publishing policy;
6 developing policy; working with the Department of the Navy, our Navy
7 counter-folks in developing policy. I'm also responsible for
8 conducting compliance inspections of our confinement facilities.

9 Q. Can you please define "BUPERS" for the court?

10 A. "BUPERS" is an acronym for the Bureau of Personnel
11 instruction.

12 Q. And what is BUPERS' purpose?

13 A. BUPERS is our corrections manual, the newly adopted
14 corrections manual for the Department of the Navy.

15 Q. And how does BUPERS relate to the Secretary of Navy
16 instructions?

17 A. It is a junior instruction, and it is more definitive than
18 the so-called global policy in the Secretary of Navy instruction.

19 Q. When was BUPERS first published?

20 A. I believe it was probably about March of April--March or
21 April of 2011.

22 Q. And when did the process for creating BUPERS begin?

1 A. Well before that. I would say probably over a year before
2 that, sir.

3 Q. And why was--why is there a need for BUPERS?

4 A. It assists the Marines and the Navy corrections personnel
5 in making timely changes to that instruction. Where we have--with
6 the SECNAV Instruction, we have to go up to the Secretary of the Navy
7 to get changes made. It's usually a 2- or 3-year process. The
8 BUPERS now is at the two-star level. It's much easier to incorporate
9 changes to our corrections manual.

10 Q. In your experience, how much of the regulation is subject
11 to interpretation?

12 A. There have been a few in my career, sir.

13 Q. Can you give an example?

14 A. Years ago, there was a policy in the SECNAV Instruction
15 that mentioned maximum custody prisoners would require restraints
16 outside of the security perimeter, and--meaning outside of the brig
17 is the way it was written, and I believe as--we asked for
18 clarification from Headquarters at the time that I was working at the
19 brig and they told us, "No; that's not the intent of that
20 instruction, that statement. What we mean is outside of the berthing
21 area for the maximum custody prisoners they should be confine--
22 restrained."

23 Q. And what is the purpose of pretrial confinement?

1 A. Pretrial confinement primarily is to ensure that the
2 individual accused is available and appears in court.

3 Q. And what is the relationship to prevention of suicide?

4 A. The staff--that is part of the staff's requirements. Not
5 only are they responsible for the custody and control of those
6 detained but also for their safety, not only for those confined but
7 also for the staff members there.

8 Q. How many suicides have occurred at facilities where you
9 were working during your career?

10 A. I haven't had any, sir.

11 Q. Have you heard of adverse action being taken against a
12 facility for a suicide?

13 A. No, sir.

14 Q. What would you have done as a brig commander if a detainee
15 threatened to use clothing for self-harm?

16 A. I probably would have taken that clothing from the
17 individual.

18 Q. What if it had been sarcastic?

19 A. I--I'm going to err on the side of caution, sir.

20 Q. Let's talk about--a little bit about the Department of
21 Defense instructions with regard to taking service members from other
22 branches. What do the Department of Defense instructions say about a
23 confinement facility taking a service member from another branch?

1 A. It states that pretrial confinement is usually done at a no
2 cost or no reimbursement and we are to take them from any service
3 irregardless [sic], especially if the command that's putting them in
4 pretrial confinement is within that area.

5 Q. And what are the requirements for a facility to take a
6 service member from another branch?

7 A. A confinement physical and a confinement order usually,
8 sir.

9 Q. Why is that all that is required?

10 A. Well that is a commander, you know, usually a commissioned
11 officer ordering that individual into pretrial confinement, so that's
12 what we use for our folks and I think that's all that's required by
13 DoD.

14 Q. How do facilities work together amongst the branches?

15 A. You know, from the Headquarters level, we have a very good
16 working relationship. We communicate often, almost daily, and, you
17 know, we communicate more with the post-trial confinement when we
18 transport them from our facilities to theirs or vice versa for
19 treatment needs and so forth.

20 Q. Let's talk a little bit about the regulations. What is the
21 purpose of Suicide Risk?

1 A. "Suicide Risk" is steps taken by the staff there to
2 minimize the opportunities for an individual that wants to hurt
3 himself or kill himself to do so.

4 Q. And who makes the determination for taking a detainee off
5 Suicide Risk?

6 A. Most cases, it is a medical officer.

7 Q. What is the authority for that?

8 A. Well he's trained in that business and, you know, when he
9 determines that an individual is not suicidal, the brig commander
10 should take appropriate action.

11 Q. What is the regulatory authority for that?

12 A. I'm not sure, sir.

13 Q. Secretary of Navy instruction and BUPERS----

14 A. Oh, I thought you were talking about the medical side.
15 Yeah, the Secretary of Navy instruction, sir.

16 Q. What is Prevention of Injury?

17 A. "Prevention of Injury" is a locally administered set of
18 restrictions that a brig commander employs when he may not be
19 convinced or a doctor has told him that somebody is not suicidal;
20 however, he's still--he's still cautious about his behavior,
21 intentions, and if given the opportunity may at least try and harm
22 himself enough to maybe gather some attention; I don't know.

1 Q. What is the--where does Prevention of Injury fall in the
2 regulatory scheme in the Secretary of Navy instructions?

3 A. Prevention of Injury, again, is one of those
4 responsibilities that the staff and that brig commander have, an
5 obligation they have to those confined and entrusted to their care.

6 Q. What do the Secretary of Navy instructions say about
7 Prevention of Injury?

8 A. That, you know, if the brig commander, the staff feel that
9 an individual has the potential to injure himself or has made
10 comments of such that he could take steps to ensure for his safety.

11 Q. And who has discretion for Prevention of Injury decisions
12 under Secretary of Navy instructions?

13 A. That would be the brig commander, sir.

14 Q. Why use Prevention of Injury instead of Suicide Risk?

15 A. There would probably be a number of reasons. The primary
16 one--the primary reason would be that, you know, you have medical
17 authority that says he's not suicidal, for one. The others, it's
18 less restrictive, less invasion of privacy for an individual.

19 Q. What is maximum custody?

20 A. "Maximum custody" is a custody that's authorized within the
21 facility for those that require the highest level of supervision,
22 sir.

23 Q. And when is it appropriate?

1 A. There are almost unlimited, you know, factors that you
2 could consider but, you know, the length of time that an individual
3 could be looking at serving if adjudged; the seriousness of the
4 offenses; the, you know, escape risk, if we consider that individual
5 an escape risk; if the escape would be considered detrimental to
6 national security, so, I mean, there's a variety of reasons.

7 Q. Have you ever--how many national security detainees have
8 you seen?

9 A. We've held one at a facility that I was at before, sir.

10 Q. What was his custody?

11 A. He was treated as maximum custody.

12 Q. And where was he held?

13 A. He was held at Quantico in a separate part of the brig
14 there, sir, in----

15 Q. Special Quarters?

16 A. There's a Special Quarters 2.

17 Q. What is medium in custody?

18 A. "Medium in custody" is a lower custody classification
19 that's reserved for those who do not require as high a supervision
20 and level of restraint, where we don't necessarily consider them as
21 potential escape risks but are only allowed to work indoors, inside
22 the facility.

1 Q. What is the longest you have seen a detainee placed on
2 Prevention of Injury status?

3 A. It's been well over a year, sir.

4 Q. And why was that detainee placed in the status for so long?

5 A. He was having some--there were some behavior abnormalities,
6 I guess. He was seeing doctors. The doctors determined he wasn't
7 suicidal but we had to still, you know, err on the side of caution
8 and because of the way he acted we kept him in that status for a
9 while.

10 Q. Why implement 5-minute checks for someone on Prevention of
11 Injury?

12 A. Well we've--they're still in danger of harming themselves,
13 which is why they're in that status; and if someone's going to injure
14 themselves in a confined environment such as a facility like that
15 where supervision is pretty prevalent, they're probably going to do
16 it pretty quick if they get an opportunity.

17 Q. What do 5-minute checks--how do 5-minute checks affect the
18 guards' interaction?

19 A. Well obviously they're seeing the individual more often
20 than the normal, you know, 15-minute checks and so forth, so they go
21 and witness the individual much more frequently.

22 Q. How invasive is one-to-one watch?

23 A. I consider it to be very invasive.

1 Q. Why?

2 A. Well you've got someone in front of your cell, you know, 24
3 hours a day with no interruption, so anything you do is being
4 witnessed by an individual, so I would consider that to be very
5 invasive.

6 Q. Do the factors for Prevention of Injury and maximum custody
7 overlap?

8 A. Yes, sir; I think so.

9 Q. And what are some of those factors?

10 A. Well you still have the more frequent checks that can
11 happen. You've got some of the--although you have a little bit more
12 clothing that you are authorized to retain in your cell, as the POI
13 you're not wearing a uniform as you traditionally would if you were
14 in general population; and, again, the increased supervision that you
15 would have.

16 Q. What effect does potential length of sentence have in
17 determining maximum custody?

18 A. Well we--the length of sentence if someone is--especially
19 in a pretrial status is looking potentially to be serving and it
20 varies by individual, but, you know, someone looking at a lengthy
21 sentence could in his mind believe or her mind believe that there's
22 nothing else to live for and they're not going to stick around to do
23 that length of sentence.

1 Q. What is the effect of potential length of sentence for
2 Prevention of Injury?

3 A. That could actually be an influencing factor as well,
4 either, you know, if I can't escape, then I'm going to injure myself
5 or worse.

6 Q. How is low frustration or tolerance a factor for maximum
7 custody?

8 A. Well I think it's a big influence in the fact that, you
9 know, just something as simple as going out to go to recreation call
10 can sometimes be a, you know, a process that takes several minutes
11 instead of just, you know, you've got to put on your restraining
12 gear, you've got to get properly clothed, and go out there, so I
13 think someone maybe who has low frustration or patience or tolerance
14 would--that would grow on somebody, I think.

15 Q. Now what is the impact for tolerance or frustration for
16 determinations of Prevention of Injury?

17 A. Equally, sir. They're applied equally, I think.

18 Q. What is the role of poor home and family conditions for
19 determining maximum custody?

20 A. Well we--we use that to determine potentially, you know,
21 whether they're--you know, the upbringing, whether they came from a
22 very stable home, a happy home, or just the opposite. It was broken.
23 It wasn't, you know, a two-parent family. It gives us an idea of

1 whether this individual has good social skills and could interact
2 with individuals in a confinement facility, so that's kind of what
3 the counselors and the brig staff would use that information for.

4 Q. What impact do poor home and family conditions have on
5 Prevention of Injury determinations?

6 A. I think it would be just about the same, sir. Whatever --
7 you know, if they had a poor family relationship and that carries
8 over while the individual is confined, you know, no one's coming to
9 visit, they don't care, it could give somebody, you know, no hope.

10 Q. What is the effect of destructive behavior in determining
11 maximum custody?

12 A. That's very--very concerning, especially in a confined area
13 like that when you're concerned about the safety of others, not just
14 that individual, so destructive behavior could very heavily influence
15 the decision on custody classification.

16 Q. And what would be the effect of considering destructive
17 behavior for determining Prevention of Injury?

18 A. Same thing. I think if somebody who's destructive in
19 nature, you're confined in a cell that you really can't do a whole
20 lot of damage to the equipment or furnishings in there, then you may
21 turn around and take it out on yourself.

22 Q. What is the effect of history when determining custody and
23 status?

1 A. It gives the brig staff the big picture. It paints a
2 complete picture as good as can be possible that hopefully lends to
3 them making educated decisions on custody and program requirements
4 and so forth, so it just gives the staff a little bit better
5 understanding of where he's coming or she's coming from to help
6 better understand the individual.

7 Q. What parts of a detainee's history would be considered?

8 A. Well I think--I mean we'd go back to and ask at least for,
9 you know, and we discussed it earlier, the family and then also
10 through the teenage years and his military career.

11 Q. What about history in confinement?

12 A. We usually ask that question as well, whether the
13 individual has been confined before or not, so it would be a good,
14 you know, benchmark at least to know if he's been confined before;
15 how he behaved or--at that--at that location.

16 Q. Why consider history if some of it might be pretty far
17 removed in time?

18 A. Well, again, I think it lends to giving the staff there who
19 are entrusted with making decisions a complete picture of the
20 individual and what capabilities are and what history is showing this
21 individual is capable of doing.

22 Q. What factors determine escape risk?

1 A. We look at things, such as length of sentence as we
2 discussed; an individual not taking, you know, responsibility for
3 actions that have placed them in confinement; a sense of hopelessness
4 would be another issue, and those are just samples of factors that we
5 would consider.

6 Q. What kind of act does a detainee have to take to become an
7 escape risk?

8 A. He doesn't have to take any action, sir. I think usually
9 the paperwork that comes with him in the form of a confinement order,
10 charge sheets; information that the command or commander provides us
11 are all information that a command--or the brig staff have initially
12 to evaluate and make a determination, so we've got a charge sheet and
13 we've got information from the command and the confinement order to
14 go off of.

15 Q. Why isn't an overt act required to establish that a
16 detainee is an escape risk?

17 A. Well because, I mean, the action doesn't necessarily have
18 to have been initiated to--I mean, an escape always starts with that
19 first step, I think, and, you know, and escape risk is the reason we
20 classify it as that; it's because we feel the individual is at risk
21 to escape.

22 Q. How much recreation call for the average detainee in
23 general population?

1 A. They are authorized 1 hour a day, sir.

2 Q. What factors can limit recreation call?

3 A. It could be something like the weather conditions could
4 influence it being cut short. If we're talking about, you know,
5 recreation call for all of general population, it could be, you know,
6 lack of the proper amount of staff that are available to supervise it
7 may cause it to be canceled or time modified. It could be the
8 behavior of the individuals when they're out there could cause the
9 recreation call to be cut short.

10 Q. And what does recreation in Marine confinement include?

11 A. The recreation program consists of a variety of things that
12 includes library privileges; being able to watch television; playing
13 board games; going out to the recreation yard to, you know,
14 participate in basketball, jogging, volleyball, whatever is available
15 at the facility.

16 Q. And how common is it to limit recreation?

17 A. It's not usually too common, sir. Individuals like to go
18 out and we'll try and do--and limit the amount of times that they
19 will get it stopped prematurely.

20 Q. Let's talk a little bit about restrictions and the bases
21 for them. Why institute a lockdown?

22 A. A lockdown is usually instituted when a confinement
23 facility is moving a maximum custody prisoner, and it could be for

1 any number of reasons; some of them include the individual is a very
2 aggressive individual, and again, because of our obligation and
3 commitment to the safety of others, we want to restrict the potential
4 of any innocent bystanders being injured if something were to happen.
5 Also, a risk of injury to the individual. Some folks may not
6 particularly care for the individual and, again, we're obligated to
7 that individual as well from injury, so we take every precaution
8 necessary to ensure that when he's moved or she's moved that it's
9 done in the safest manner possible.

10 Q. Why might visits be limited to a noncontact booth?

11 A. Well because, you know, the other alternative would be that
12 they would be in with general population, where now you have an
13 individual visiting--a maximum custody individual visiting with
14 general population and security and safety reasons primarily.

15 Q. What about limiting a detainee to not lie on his rack
16 during the day?

17 A. That policy is in place because based on the individual
18 facility there is a plan of the day where work--the workday begins
19 and the workday ends and we respect that by not allowing folks to
20 sleep during the workday, so we try and not allow the individuals the
21 opportunity to lay on their racks; try to keep them honest, you know.
22 We want to discourage them from falling asleep or getting too
23 comfortable and falling asleep.

1 Q. Why restrict gear in a detainee's cell?

2 A. The restriction of gear is usually done as special handling
3 instructions and it's geared towards what restrictions that brig
4 commander has placed on an individual, so in the case of somebody
5 who's a suicide risk, those items that an individual could use to
6 potentially injure himself would be removed. If you have somebody in
7 a disciplinary status, some of those privileges, like reading
8 material, things of that nature would be removed from the cell
9 because of the special handling instructions so.

10 Q. Why limit a detainee to a single piece of silverware if
11 he's eating in his cell?

12 A. Again, that would be exclusive to those in--in a elevated
13 supervised status and by limiting the number of utensils that he has
14 in his cell, we limit the potential tools that an individual could
15 use to harm himself.

16 Q. Why restrict access to hygiene items?

17 A. Hygiene items can be used as contraband. I've seen them
18 used as contraband. Something as simple as a toothbrush could be
19 turned into what we consider contraband, which means converted into
20 something which it was not intended to be used for originally, which
21 could in turn, turn into a weapon that could be used against a staff
22 member or the individual himself.

23 Q. What about toilet paper?

1 A. Toilet paper has been used as a vehicle for individuals
2 successfully committing suicide in confinement facilities, so
3 individuals who are on the suicide watch are usually given toilet
4 paper as needed.

5 Q. What is the purpose for limitations on the volume of speech
6 between detainees?

7 A. I'm sorry, sir. Can you repeat that?

8 Q. What is the purpose of limiting detainees to speaking in a
9 low, conversational tone?

10 A. Oh. The acoustics, and it's different from facility to
11 facility, but I think if there's local policy that does not allow
12 them to speak, it's usually because the design of that facility, the
13 acoustics in that facility, when things get a little loud, it could
14 be hard for the staff members to give out instructions or emergency
15 instructions in the case of an emergency, so they try and limit the
16 amount of noise so that a staff member can communicate with those
17 confined inside the cells.

18 Q. What is the purpose of preventing a detainee from
19 exercising in his cell?

20 A. Prevention of--or preventing that is primarily a safety
21 concern. They are--the cells do have--they are within standards and
22 they do have the furn--required furnishings in there, but somebody
23 could very easily injure themselves, you know, if they're doing

1 something like side straddle hops or, I mean, they could trip, I
2 mean, and so it's primarily a safety reason. We don't want them to
3 injure themselves accidentally.

4 Q. What is the rationale for not allowing detainees on maximum
5 custody to work?

6 A. The rationale is that if the local policy is to restrain
7 them with leg irons and hand irons and a transport belt, they're not
8 going to be very useful doing any work outside with those type of
9 restraints on, so it's almost, you know--it's not even worth taking
10 somebody out to put them to work because they can't do a whole lot.

11 Q. What is the normal complaint process for a detainee?

12 A. The---there's a DD Form. It's called a DD Form 510. It's a
13 request for interview form that an individual can lodge any
14 complaints to anyone amongst the staff there.

15 Q. And how does that process work?

16 A. For those in--those that are in maximum custody, there's a
17 box that's brought to them. They're asked if they--if they have a
18 need for a 510 to fill out. If they do, they're given one. They
19 complete it and then they put it in the box, and that's viewed the
20 following morning. They're collected and distributed to the
21 appropriate folks for action.

22 Q. How would a brig know if a detainee wanted a change in
23 status if the detainee wasn't communicating with the brig staff?

1 A. If he wasn't communicating directly to the brig staff, you
2 know, the detainee would have, you know, command visits that he could
3 probably voice his concern to; chaplain, you know, comes by
4 routinely. He could communicate that through the chaplain and maybe
5 get some visibility on--in with the brig commander as well.

6 Q. Let's talk a little bit about the report you did on PFC
7 Manning's confinement.

8 A. Yes, sir.

9 Q. Why did you complete a report?

10 A. The base commander had asked that I go down to the brig at
11 Quantico and answer, you know, four specific questions, I think, as
12 part of his reply to the 138.

13 Q. And who was the base commander?

14 A. At the time it was Colonel Choike.

15 Q. And what conclusion did you reach about Chief Warrant
16 Officer Averhart placing PFC Manning on Suicide Risk?

17 A. My determination was that it was within his authorization
18 to do that based on the information that he and his staff had
19 available to him to place him in the Suicide Risk status at the time.

20 Q. What information did you consider when reaching that
21 decision?

22 MJ: What time frame are we talking about; what Suicide Risk?

23 ATC[CPT VON ELTEN]: The Suicide Risk in August 2010.

1 A. I don't remember the specifics between the two dates,
2 ma'am, sir, but I will say that what I looked at was whether there
3 was documentation that supported the fact that he should be placed in
4 Suicide Risk status.

5 Q. What conclusion did you reach about Chief Warrant Officer
6 Averhart removing PFC Manning from Suicide Risk after 18 January of
7 2011?

8 A. Removing him from Suicide Risk?

9 MJ: Removing him or placing him in?

10 Q. Sorry, placing him on Suicide Risk.

11 A. The same, sir. I think I reviewed the documenta--the
12 recommendations from the counselor that led to that recommendation
13 and felt that he was justified in his--in his authority to do so.

14 Q. What conclusion did you reach about removing--Chief Warrant
15 Officer Averhart removing PFC Manning on 20 January from Suicide
16 Risk?

17 A. I felt that although the individual was removed from
18 Suicide Risk that I thought it could have been done in a more timely
19 manner than it was.

20 Q. Why should it have been more timely?

21 A. I--the doctor recommended that he come off, I forget the
22 date specifically, but I do know that there was probably a 3- to 4-

1 day lapse before he was ultimately removed, and my interpretation of
2 the regulations is that he should have been removed that day.

3 Q. Let's talk a little bit about the--about what you reviewed.
4 What staff members did you talk to?

5 A. It was an abbreviated staff. I do know that I did not have
6 the full complement of the staff there. They were out at another
7 official--some official business, but I--you know, sir, I don't
8 remember who specifically was there.

9 Q. What documentation did you review?

10 A. I asked for Detainee Manning's file, which included
11 documents from his previous commander and I think I believe I
12 reviewed the confinement order and then I reviewed some, you know,
13 some of the miscellaneous paperwork that was generated by the brig
14 upon his arrival and I believe I reviewed some of the counselor
15 recommendations and counseling notes.

16 Q. What conclusion did you ultimately reach about PFC
17 Manning's confinement at Quantico?

18 A. I felt that it was authorized. There was--in my opinion,
19 it was never a question that it was authorized and that it was within
20 the regulations.

21 Q. What do you mean "it was authorized"?

1 A. Well his being placed in pretrial confinement was
2 authorized. We had a confinement order. There was nothing illegal
3 about that portion so.

4 Q. What about the restrictions placed on PFC Manning's
5 confinement?

6 A. Well I believe, again, reviewing the paperwork that came
7 with Manning initially and just reading through some of the
8 counselor's notes of maybe some of the incidents that took place that
9 Suicide Risk was probably appropriate and maximum custody was
10 probably appropriate for the individual at the time.

11 Q. What about Prevention of Injury?

12 A. Prevention of Injury, when a doctor--again, when a doctor
13 recommended he come off of that particular status, it was done so a
14 few days later and, again, they, the brig staff, had noted some
15 behavior abnormalities, some things that really they didn't get a
16 warm feeling about mentally where he was at, his mental--they felt
17 maybe he was unstable, so they still wanted to keep an eye on him, so
18 they dropped the Suicide Risk to the lesser invasive restrictions of
19 Prevention of Injury.

20 Q. Just so I'm clear, what conclusion did you reach about
21 keeping PFC Manning on Prevention of Injury even though his
22 psychiatrists were recommending he be removed from Prevention of
23 Injury?

1 Q. Your office is the proponent of SECNAV Instruction 1640.9C,
2 correct?

3 A. Correct.

4 Q. You also represent the Marine Corps at the Department of
5 Defense level of correction matters?

6 A. Yes, sir.

7 Q. And you are responsible for conducting compliance
8 inspections at Marine Corps confinement facilities.

9 A. Yes, sir.

10 Q. In your position, you also act as a liaison with the Army
11 in order, in this case, to get PFC Manning to Quantico.

12 A. Yes, sir.

13 Q. You were involved, also, in the process of getting him from
14 Quantico to the JRCF.

15 A. I wouldn't say that, sir.

16 Q. Well you were--your office and you were obviously
17 coordinated with in order to get him from--out of Quantico, correct?

18 A. Right. Yes, sir.

19 Q. And right from the beginning when there was a discussion to
20 put PFC Manning in Quantico, you and others talked about whether or
21 not that was the right place for him.

22 A. I don't think I ever disputed that, sir.

1 Q. You were not involved in conversations on whether or not
2 Quantico was the right place for PFC Manning?

3 A. Not--are we speaking before he arrived there or----

4 Q. Yes.

5 A. Okay. No, sir. I don't think we had--we had probably
6 about 2 days' notice, I believe, and my opinion was that if that's
7 where the Army was going to court-martial him at, then that was the
8 appropriate place for him is, I believe, what my feelings were.

9 Q. Were you ever involved in conversations about whether or
10 not Quantico was the appropriate place for him?

11 A. I think that may--if we did, it was probably after his
12 arrival and it was more geared towards whether Quantico could
13 support, you know, the need.

14 Q. Do you recall telling me that you had meetings and
15 participated in meetings on that topic?

16 A. No, sir. I don't recall telling you that.

17 Q. All right, so e-mails. After PFC Manning's assignment to
18 the Quantico Brig, you were included on e-mails dealing with his
19 confinement, correct?

20 A. Yes, sir.

21 Q. And you were copied on most of the significant events
22 involving PFC Manning?

23 A. Okay. I believe so.

1 Q. Is that correct?

2 A. Yes, sir.

3 CDC[MR. COOMBS]: And I want to talk to you about a chain of
4 e-mails for a moment.

5 [The civilian defense counsel handed a document to the court
6 reporter. The court reporter started to mark the document.]

7 MJ: What's the number?

8 CDC[MR. COOMBS]: Still marking, ma'am.

9 [The court reporter marked the document as AE 439A and handed it to
10 the civilian defense counsel.]

11 CDC[MR. COOMBS]: I'm handing the witness what's been marked as
12 Appellate Exhibit 439A.

13 Q. Chief Galaviz,----

14 A. Yes, sir.

15 Q. ---- looking at that, you recently reviewed that chain of
16 e-mails, correct?

17 A. I believe so; yes, sir.

18 Q. This is--one of the e-mails is a 29 December 2010 e-mail
19 Lieutenant Colonel Wright sent to Colonel Choike and you were cc'd on
20 that, correct?

21 A. What was the date on that one again, sir?

22 Q. 29 December 2010.

1 A. [Pause to review exhibit] Okay. From Colonel Wright to
2 Colonel Choike, yes, sir.

3 Q. And Colonel Wright is your immediate supervisor?

4 A. He was at the time, yes, sir.

5 Q. What was his position, his title?

6 A. Branch Head for the Law Enforcement and Corrections Branch.

7 Q. And you knew who Colonel Choike was, correct?

8 A. Yes, sir.

9 Q. In addition to yourself, CW4 Averhart was also cc'd on this
10 e-mail.

11 A. Yes, sir.

12 Q. And did you know who CW4 Averhart was?

13 A. Yes, sir.

14 Q. And how did you know who he was?

15 A. He was a corrections officer, so, I mean, I knew he worked
16 in--I mean, we've known each other for many years.

17 Q. How long have you known Chief Averhart?

18 A. Probably since about 2004, something like that, sir.

19 Q. Now in your e-mail, your boss states, quote, Since the PFC
20 Manning case continues to draw international attention, I believe it
21 was to have as many people as possible in their official capacity be
22 witness to the conditions PFC Manning is subject to so they can

1 personally attest that he is being treated in accordance with
2 regulations, end quote.

3 Do you see that on page 2?

4 A. I do.

5 Q. Now Colonel Choike responded to the e-mail on 30 December
6 2010, correct?

7 A. Correct.

8 Q. And he cc'd you, CW4 Averhart, Colonel Oltman, Colonel
9 Shumake, Mr. Durham, and Mr. Geoffroy.

10 A. Correct.

11 Q. Did you know who Colonel Oltman was at this time?

12 A. Yes, sir.

13 Q. And how did you know who he was?

14 A. I mean, he was the battalion commander down at Quantico who
15 the brig fell under.

16 Q. And how about Colonel Shumake; did you know who he was?

17 A. Yes, sir.

18 Q. And how did you know him?

19 A. Colonel Shumake at the time was the chair of the--of DoD
20 Corrections Council, so I mean that was a quarterly meeting that I've
21 made and so I knew him from there.

22 Q. And what about Mr. Durham?

1 A. Mr. Durham is a couple of steps up on my leadership chain,
2 but I've known him for probably about 15, 20 years, so I knew who he
3 was.

4 Q. And when you say "a couple of steps up," he is above
5 Lieutenant Colonel Wright?

6 A. Correct; yes, sir.

7 Q. What about Mr. Geoffroy?

8 A. Mr. Geoffroy was Mr. Durham's boss.

9 Q. So he's even higher.

10 A. Yes, sir.

11 Q. And did you know Mr. Geoffroy?

12 A. Yes, sir.

13 Q. Now in his reply, Colonel Choike states that he had his own
14 IG make an unannounced visit to the brig and would include the report
15 to you--or to your office, correct?

16 A. Let's see [reviewed document]. I believe what he states is
17 he's going to send a copy to Colonel Shumake, not my office.

18 Q. And why do you believe that?

19 A. Well he says, "I will provide a copy as a read-ahead for
20 the OSD Chair, DoD Corrections Council visit"; that would be Colonel
21 Shumake.

22 Q. Right, and we'll see an e-mail shortly where you received a
23 copy of this same IG report, correct?

1 A. Okay. I don't know, sir.

2 Q. Okay.

3 A. I don't remember seeing it, but----

4 CDC[MR. COOMBS]: All right.

5 [The civilian defense counsel handed a document to the court
6 reporter. The court reporter marked the document as AE 439B and
7 handed it to the civilian defense counsel.]

8 CDC[MR. COOMBS]: I'm retrieving from the witness Appellate
9 Exhibit 439A and handing the witness Appellate Exhibit 439B.

10 Q. At 0630 on 4 January 2011, Lieutenant Colonel Wright cc'd
11 you on an e-mail which discussed the fact that Colonel Shumake may
12 not need to visit the brig due to Major Zelek's report. This is on
13 the top of page 2.

14 Do you see that?

15 A. Okay [Pause to review exhibit]. So this is from Colonel
16 Wright [pause], yes, sir.

17 Q. And then if you go to the first page, Colonel Choike
18 responds at 0837 hours on that same day and he provided you and
19 Lieutenant Colonel Wright with a copy of Major Zelek's IG report,
20 correct?

21 A. Yes, sir.

22 Q. And Colonel Choike informed you that he had sent Major
23 Zelek's report to Lieutenant General Flynn.

1 A. [Pause] Okay, yes, sir.

2 Q. And, of course, because you're cc'd on this, you reviewed

3 the report and the e-mail, correct?

4 A. I probably did, sir. I don't remember reading that IG

5 report, but I probably did.

6 Q. And in that e-mail, Colonel Choike indicated that

7 Lieutenant General Flynn wanted OSD to conduct an inspection; is that

8 right?

9 A. [Pause] It doesn't say "an inspection," sir. I don't

10 interpret that as an inspection. It says "a visit."

11 Q. All right, OSD is the Office of the Secretary of Defense,--

12 --

13 A. Yes, sir.

14 Q. ---- correct? And OSD in this case would be Colonel

15 Shumake.

16 A. Correct.

17 Q. And you say "a visit" as opposed to "an inspection." I

18 didn't mean to step on a term of art, so what are--what's the

19 differences between those two for you?

20 A. "A visit" could just be to go in, casually see the

21 situation. "An inspection" would be to go in; you pull out

22 regulations; you look at policies; you review those; you conduct an

1 inspection to ensure compliance with the regulations; that would be
2 the difference to me.

3 Q. All right, so we'll go with "visit." Are you okay with
4 "visit"?

5 A. That's--that's what I said, yes, sir.

6 Q. All right, so Colonel Choike asked--or he indicated in this
7 case that Lieutenant General Flynn wanted OSD to conduct a visit; and
8 Colonel Choike asked for your support in encouraging that that visit
9 by OSD take place.

10 A. [Pause] Is that in the first e-mail up on top, sir?

11 Q. No. It's in Colonel Choike's e-mail, one below it.

12 A. [Pause] I don't see where he says----

13 Q. Do you see where it says, "Need your support encouraging
14 that this visit take place"?

15 A. Right, okay.

16 Q. So he asked for your office's support in encouraging that
17 that visit take place.

18 A. Well, no, I think he sent it to my boss, so he asked that
19 my boss coordinate that, I think.

20 Q. And that would be your office, right?

21 A. A step above, I think, sir. It wouldn't be my office.

22 Q. Okay, he's asking for a step above your office----

23 A. True.

1 Q. ---- for support.

2 A. That's true.

3 Q. Okay. And then at this point, obviously, he also asks to

4 let him know if the possibility of a visit by OSD was fading so that

5 he could inform his boss, Lieutenant General Flynn.

6 A. Okay.

7 Q. Is that correct?

8 A. [Pause] Yes, sir.

9 Q. And you obviously knew at this point that Lieutenant

10 General Flynn was involved in the situation of PFC Manning's

11 confinement status.

12 A. Right; yes, sir.

13 Q. And this was prior to your independent investigation; is

14 that correct?

15 A. Yes, sir.

16 Q. Now at 1126, Lieutenant Colonel Wright responds back to

17 Colonel Choike, and he informs Colonel Choike that the Quantico Brig

18 should expect a dual visit from both the Marine Corps and Army IG

19 offices, correct?

20 A. Correct.

21 Q. And he informs him that he will be present and you will

22 also be present; is that correct?

23 A. Yes, sir.

1 Q. And why would you be present for an Army IG and Marine
2 Corps IG inspection?

3 A. I think it may have been to--I mean, they don't probably
4 have the resident corrections experience that potentially, I guess, I
5 would have maybe to help answer some of their questions that they may
6 have.

7 Q. All right, you were also informed that General Casey and
8 General Amos would probably have a conversation about PFC Manning
9 soon.

10 A. Right; yes, sir.

11 Q. And General Casey, General Amos, and Lieutenant General
12 Flynn weren't the only generals on this e-mail chain, correct?

13 A. [Pause to review exhibit] Let's see who else is on here.

14 Q. Do you recall seeing at the very beginning a e-mail from
15 Major General Ary?

16 A. Oh, okay. [Reviewed exhibit] Yes, sir.

17 Q. And you knew who Major General Ary was, correct?

18 A. Yes, sir.

19 Q. You knew that he was the SJA for the Marine Corps?

20 A. Correct.

21 Q. And this was an e-mail chain that because you were cc'd you
22 were included with this e-mail as well.

23 A. Right; yes, sir.

1 Q. Now in this e-mail, do you see at the very beginning where
2 it says, "Lieutenant General Flynn called today asking about PFC
3 Manning and the recent press articles speculating about PFC Manning's
4 treatment at the Quantico Brig. Although Lieutenant General Flynn
5 has the utmost trust and confidence in the way the brig is being run
6 and that they--and that PFC Manning's treatment meets DoD standards,
7 he would like to be proactive and see if there are a few steps we can
8 take to ensure we hold the moral high ground if issues start to take
9 hold in the press."

10 You see that?

11 A. Yes, sir.

12 Q. And then below, the second paragraph, it states, "I believe
13 he has a point; that the story may get additional press interest,
14 especially given the suicide of Captain Webb at Quantico and the
15 other Sailor in pretrial confinement at Pendleton last year."

16 You see that?

17 A. Yes, sir.

18 Q. And then he ends the e-mail saying, "Again, Lieutenant
19 General Flynn is confident we are doing everything right. He just
20 wants to make sure everyone else agrees from a strategic messaging
21 standpoint."

22 You see that?

23 A. Yes, sir.

1 Q. Now obviously this was a e-mail chain that, again, you saw
2 before your independent inspection.

3 A. Right.

4 Q. Now do you see where your boss's boss, Mr. Geoffroy,
5 responds to Major General Ary?

6 A. [Reviewed exhibit] On the very top of page 5, sir?

7 Q. Very bottom of page 4.

8 A. [Reviewed exhibit] Yes, sir.

9 Q. And your boss's boss says and he indicates that he believes
10 PFC Manning was being treated in accordance with the ACA standards?

11 A. [Reviewed exhibit] Right; yes, sir.

12 Q. He also recommended having various individuals conduct a
13 visit at Quantico and endorse the care and treatment of PFC Manning.

14 A. [Reviewed exhibit] Correct; yes, sir.

15 Q. And then Lieutenant General Flynn, just right above that,
16 responds to Mr. Geoffroy by saying, quote, Just what I was looking
17 for.

18 A. Correct.

19 Q. And, of course, this is not only the same e-mail that you
20 were included on, but this whole chain was also included and sent to
21 CW4 Averhart, Colonel Oltman, and Colonel Choike, correct?

22 A. It appears so; yes, sir.

1 Q. So before you were even tasked to conduct your inquiry, you
2 already knew that some pretty high-ranking people, in fact, your
3 boss, your boss's boss, and his boss all commented favorably on PFC
4 Manning's confinement conditions, correct?

5 A. Yes, sir.

6 Q. Let's talk about, for a moment, your inquiry. Now you did,
7 in fact, conduct a special inquiry into the complaint by PFC Manning,
8 correct?

9 A. I responded--I guess I was asked to answer four questions
10 from the base commander; yes, sir.

11 Q. And Colonel Choike selected you to conduct this special
12 inquiry.

13 A. I don't know the logic behind it, but I do know that I was--
14 I was told by my boss that I was--would support that mission.

15 Q. And Colonel Choike wasn't your boss, though, right?

16 A. No, sir.

17 Q. And as far as you know, I guess, at that point, do you know
18 if it's Lieutenant Colonel Wright, Mr. Durham, or Mr. Geoffroy that
19 approved of Colonel Choike's selection of you?

20 A. No, sir. I don't know. I would imagine it may have gone
21 through Colonel Wright up to Mr. Durham, ultimately Mr. Geoffroy, but
22 I do recall that Lieutenant Colonel Wright was the one that told me
23 that I would support it, sir.

1 Q. And you were tasked at that point to assist Colonel Choike
2 in the Article 138 process.

3 A. Yes, sir.

4 [The civilian defense counsel handed a document to the court
5 reporter. The court reporter marked the document as AE 439C and
6 handed it to the civilian defense counsel.]

7 CDC[MR. COOMBS]: I'm retrieving from the witness Appellate
8 Exhibit 439B and handing the witness Appellate Exhibit 439C.

9 Q. Chief Galaviz, by the way, if at any time you need a break
10 for comfort or whatnot, just let me know, okay?

11 A. Thank you.

12 Q. Chief Galaviz, I'm looking at this form. Does that look
13 like your appointment memorandum?

14 A. It does, sir.

15 Q. And who is that signed by?

16 A. Colonel Choike.

17 Q. And before we talk about your answers to his four
18 questions, I want to ask you about some of the things that happened
19 before your investigation, okay?

20 A. Okay.

21 CDC[MR. COOMBS]: And to do that we're going to have to discuss
22 another e-mail.

1 [The civilian defense counsel handed a document to the court
2 reporter. The court reporter marked the document as AE 439D and
3 handed it to the civilian defense counsel.]

4 CDC[MR. COOMBS]: I'm retrieving from the witness Appellate
5 Exhibit 439C and handing the witness Appellate Exhibit 439D.

6 Q. Chief, this is a e-mail from Colonel Choike to Colonel
7 Oltman dated 10 January 2011. In that e-mail it states, quote, We
8 need to stress the importance of concurrence in what we are doing in
9 light of all the attention received. CW5 Galaviz is still coming by
10 to visit this Wednesday. We might need to discuss this beforehand,
11 end quote.

12 A. [Reviewed exhibit] I'm trying to find where you're at, sir.
13 What day was that e-mail?

14 Q. **So if you go to [pause]**--you go to the--what would be the
15 third page,----

16 A. Okay.

17 Q. ---- and towards the very top, do you see where the second
18 sentence down, it starts with, "We need to stress"?

19 A. Yes, sir.

20 Q. Did Colonel Choike or Colonel Oltman ever speak with you
21 about the importance of concurrence?

22 A. No, sir.

1 Q. Did anyone ever speak to you about the importance of
2 concurrence?

3 A. No, sir.

4 Q. Now if you go, I guess, towards the second page, then, and
5 you see on that same day Colonel Oltman writes back and he states--
6 and this is writing back to Colonel Choike, states, quote, The Chief
7 and I will be with him. I share your concerns and have discussed
8 with Galaviz. I recommend we hit him up with it again on Wednesday
9 a.m. when he's here and request that he be present at the 1330
10 meeting as well.

11 You see that?

12 A. Yes, sir.

13 Q. Did, in this case, Colonel Oltman ever pull you aside and
14 speak to you again?

15 A. No, sir.

16 Q. So he didn't do what he said; he's going to discuss the
17 concerns with you?

18 A. No, sir. Again, if I recall correctly, that afternoon I
19 took the train, I think, just back from Crystal City down to Quantico
20 and got in my vehicle and drove straight to the brig, so I don't--I
21 don't believe--I don't remember making any stops or talking to the
22 base commander or the battalion commander before--before I went over
23 there.

1 Q. All right.

2 Did anyone ever tell you that we should expect that if
3 someone gives an opinion that PFC Manning is not being treated
4 appropriately that PFC Manning's defense counsel will get that
5 information and exploit it in the press?

6 A. That someone told me that?

7 Q. Did anyone ever tell you that?

8 A. Not that I recall, sir.

9 Q. Did anyone ever share that concern with you that if
10 somebody comes in and says PFC Manning's not being treated
11 appropriately that the defense counsel's going to exploit that in the
12 press?

13 A. I--from my standpoint, I'm not sure what--what they were
14 hoping to gain if they told me that, because to me, you know, I
15 wasn't directly involved in all that so I don't remember that
16 conversation ever had taken place with anyone, sir.

17 Q. Do you see up above, this is now Colonel Choike's response,
18 this is the very top one on the first page, where he makes a comment,
19 "Arm chair quarterbacks are not welcome at the Quantico Brig"?

20 A. Right.

21 Q. Did anyone ever express to you that arm chair quarterbacks
22 were not welcome?

1 A. Um [pause]--I will say that I don't know who I heard this
2 from but I think they may have relayed that if they were there --if
3 someone was going to come visit to give constructive criticism, they
4 were all for it, because there was I think at the time obviously
5 many, many agencies that probably wanted to go down there and visit.

6 Q. Okay.

7 Well let's talk for a moment about your investigation, all
8 right?

9 A. Uh-huh.

10 Q. Now you pulled, you said, PFC Manning's prisoner file?

11 A. Yes, sir.

12 Q. Is that correct?

13 A. Correct, sir.

14 Q. And that file contained supporting documentation since he
15 arrived to the brig.

16 A. Or that came with him from the b ----

17 Q. The file did not contain any of the mental health
18 recommendations, correct?

19 A. No, sir.

20 Q. And you did not ask to see any of the mental health
21 recommendations.

22 A. I--no, sir; I didn't. I didn't think they were relevant to
23 me answering the four questions.

1 Q. And the brig obviously did not offer to let you see any of
2 the mental health recommendations?

3 A. They didn't offer, but if they--if I had asked for them, I
4 think they probably would have given them to me.

5 Q. You did, however, see the brig counselor reports, at least
6 some of them.

7 A. Yes, sir.

8 Q. And you noted that PFC Manning was consistently not
9 receiving any disciplinary reports?

10 A. Yes, sir.

11 Q. And consistently not receiving any adverse spot
12 evaluations?

13 A. There was one or two in there, but, yeah, it was pretty --I
14 mean, for the most part, he was pretty well-behaved, it seemed.

15 Q. And he was consistently receiving average or above average
16 work and training reports.

17 A. Right; yes, sir.

18 Q. Now as part of your report, you never spoke to PFC Manning?

19 A. No, sir.

20 Q. And as part of your investigation, you did review the
21 classification and assignment board recommendations in order to try
22 to determine why they would have gone MAX and POI, correct?

23 A. Right; yes, sir.

1 Q. And the ones you reviewed were only the few that you had
2 once they started using the brig 4200 Form?

3 A. I believe, yes, sir.

4 Q. And you noted at that point that the brig did not always
5 use the brig Form 4200, correct?

6 A. I don't recall saying that, sir.

7 Q. Well, did you note that they hadn't used the form basically
8 between August to the middle of January, from August 2010 to the
9 middle of January, 2011?

10 A. Was that the classification and assignments board
11 paperwork?

12 Q. [Nodded head indicating an affirmative response.]

13 A. I don't recall saying that, and I don't recall not seeing
14 them prior to that, but it may be true.

15 Q. All right, so--just so I understand your testimony, do you
16 recall seeing any classification and assignment board brig 4200 Forms
17 between--dated between August of 2010 and early January of 2011?

18 A. No, sir. I don't recall seeing any.

19 Q. What was your understanding of how----

20 MJ: Can I stop you there?

21 CDC[MR. COOMBS]: Yes, ma'am.

22 MJ: Once again, you don't recall seeing it or you remember
23 looking and they weren't there?

1 WIT: I don't recall seeing those forms for that period of time,
2 ma'am. I do recall probably seeing a couple of them, the
3 recommendations that went up, but I don't think they were that far
4 back. I think they were more recent than the time period that you
5 asked.

6 Q. Okay. What was your understanding of the C&A board
7 process; how that was supposed to work?

8 A. The C&A board process is a board that's convened. It's a
9 recommendation from usually the counselor, and what the counselor
10 does is based on his interviews with the individual detainee, input
11 from anyone else who potentially has had interactions with the
12 individual makes recommendation on custody and statuses to a board,
13 who in turn listened to the counselor make his recommendation,
14 listened to his justification, and then make a recommendation to the
15 brig commander.

16 Q. So how is the C&A board voting process supposed to work?

17 A. You know, it's usually an odd number of folks involved, so
18 there is no ties, you know, but they will either be in favor of the
19 recommendation or against it or may even make a recommendation of
20 their own to the brig commander based on majority vote.

21 Q. And is the C&A board form supposed to be pre-filled out or
22 are they supposed to fill it out when they meet?

23 A. It's--yeah, it's filled out after the board meets, sir.

1 Q. And why is it filled out after the board meets?

2 A. Well there's discussion; there's interaction; there's

3 questions that take place, so I don't think it could be filled out

4 before those questions and interaction takes place.

5 [There is a pause in the proceedings while the civilian defense

6 counsel retrieves AE 259, Enclosure 32.]

7 CDC[MR. COOMBS]: I'm handing the witness what's been marked--

8 well what is Enclosure 32 of Appellate Exhibit 259.

9 Q. I just wanted you to take a look at--and let's go ahead and

10 just look at, say, page 6 of 26.

11 A. [Did as directed.]

12 CDC[MR. COOMBS]: And I'm retrieving from the witness Appellate

13 Exhibit 439D.

14 Q. Chief Galaviz, just asking a couple of questions about the

15 C&A form. Is--does this form look familiar to you?

16 A. It looks like a locally produced form, yes, sir, from the

17 brig. It's not the DD Form that is traditionally used.

18 Q. And is the DD Form different from this?

19 A. I think a lot of the information is the same. Obviously

20 the format is completely different, so, yeah, but this is a local

21 form; it's called a brig Form.

22 Q. And why would a brig use a local form as opposed to the DD

23 Form?

1 A. Don't know, sir. I really can't answer that. I'm not
2 there so.

3 Q. Is the DD Form required?

4 A. It is--it is required; yes, sir.

5 Q. So if the--if the brig chooses not to use the DD Form, do
6 they have to document that somehow?

7 A. Well, I mean,----

8 Q. Is it required?

9 A. If it's required, they should be using the DD Form is what
10 I'm saying, so I'm not sure the reason behind this locally produced
11 document and why they're still using it in '11. I think prior to
12 that our office had sent out an encouraging memorandum--or a
13 memorandum encouraging them to use the complete DD Forms so.

14 Q. And I know you don't have a copy of the DD Form in front of
15 you,----

16 A. Right.

17 Q. ---- but, Chief Galaviz, can you tell us just from looking
18 at the brig Form what might be missing from the brig Form that would
19 be on the DD Form?

20 A. [Reviewed exhibit] There's usually a point scale system
21 that's in the DD Form; a point value that's added up that assists the
22 brig in providing them with an objective-based custody classification
23 recommendation.

1 Q. And so I understand you correctly, the point value might
2 lay out if somebody has more points than this, this would qualify
3 them for MAX; if they're less than this, this would----

4 A. Correct.

5 Q. ---- be MDI.

6 A. Yes, sir.

7 Q. And does the--does the DD Form talk about anything with POI
8 at all or Suicide Risk?

9 A. Not that I recall, sir. I do think that that's part of
10 just the counselor's recommendation. You know, there's--you know,
11 his recommendation that is included as part of the DD Form that is
12 presented to the board.

13 Q. Okay, so other than missing the point calculation, anything
14 else that you see on that form that is different than the DD Form
15 that you would recommend and actually say is required?

16 A. [Reviewing exhibit] Yeah, unless there's a separate
17 recommendation that accompanied this, you know, I would say that
18 would be the only other thing I see that's missing.

19 Q. What's the secondary recommendation?

20 A. Or the counselor recommendation form, you know, not the
21 form but the counselor recommendation that he presents to the board
22 itself.

1 Q. Now in this instance, the one that you were looking at,
2 page 6 of 26, has Gunnery Sergeant Blenis as the senior board member,
3 correct?

4 A. [Reviewed exhibit] Yes, sir.

5 Q. Now Gunnery Sergeant Blenis was PFC Manning's counselor.

6 A. Right.

7 Q. And his testimony was that he would pre-fill out this form,
8 to include the recommendation, and then once the form was pre-filled
9 out, all the boxes checked, then he would sit down and talk with the
10 other members of the board.

11 A. Right.

12 Q. As a corrections expert, do you see a problem with doing it
13 in that manner?

14 A. Well I do. I don't--first off, the individual making the
15 recommendation should not also be serving as a board member, for one.

16 Q. And why is that?

17 A. Well, I think, I mean, he's at--he has his--he already has
18 his opinion and I think that, again, it's his position to make
19 recommendations to others, encouraging their support or, you know, an
20 alternate recommendation. I mean, for him to serve as a board
21 member, I don't think he's ever going to vote against his
22 recommendation, so that's kind of what--from my thought process.

1 Q. And could you see, Chief Galaviz, any other problem with
2 having the senior board member be the one that is telling the junior
3 board members what his recommendation is in advance of any
4 discussion?

5 A. Right; yes, sir.

6 Q. And why would that be problematic from your standpoint?

7 A. I mean, I think there's some, you know, maybe some
8 unnecessary, you know, command influence maybe; I don't know; that's
9 what I would think.

10 CDC[MR. COOMBS]: All right. I'm retrieving Enclosure 32 from
11 the witness.

12 [The civilian defense counsel handed a document to the court
13 reporter. The court reporter marked the document as AE 439E and
14 handed it to the civilian defense counsel.]

15 CDC[MR. COOMBS]: I'm going to hand the court what's marked as
16 Appellate Exhibit 439E. I'm going to give you a copy of it, okay?

17 WIT: Okay.

18 CDC[MR. COOMBS]: The reason why is I--the copy I've underlined
19 a few things.

20 Q. Chief Galaviz, do you recognize that?

21 A. Yes, sir.

22 Q. And what is that?

23 A. This is my report back to Colonel Choike.

1 Q. Okay. Let's talk about your review of the brig's
2 determination to keep PFC Manning on maximum custody, okay?

3 A. Right.

4 Q. Now, under the SECNAV Instruction, ordinarily only a small
5 percentage of prisoners should be classified as maximum custody,
6 correct?

7 A. Yes, sir.

8 Q. And maximum custody is required for individuals who have a
9 high probability of escape or are potentially dangerous or violent;
10 is that correct?

11 A. Those are some of the factors, yes, sir.

12 Q. Do you recall others?

13 A. I believe, you know, whose escape could be cause for
14 national security concerns; extremely aggressive, I think, are some
15 of the others.

16 [There was a pause in the proceedings while civilian defense counsel
17 retrieved Appellate Exhibit 259, Enclosure 47.]

18 CDC[MR. COOMBS]: I'm handing the witness Enclosure 47 to
19 Appellate Exhibit 259 and looking at page 97.

20 Q. Now as the proponent of the regulation--or the instruction
21 in this case,----

22 A. Uh-huh .

1 Q. ---- do you--do you see--actually can you read "Maximum
2 Custody" and stop at the word "and" that's----

3 A. [Did as directed] "Prisoners requiring special custodial
4 supervision because of the high probability of escape, and [sic]
5 potentially dangerous or violent..."

6 Q. Okay, so would you agree with me at that point, Chief
7 Galaviz, it's the high probability of escape or potentially dangerous
8 and violent?

9 A. I can agree that that's what I read; yes, sir.

10 Q. Okay, at that point.

11 A. Uh-huh.

12 Q. And then you see the conjunction "and"?

13 A. Correct.

14 Q. And what does it say after that then?

15 A. "...whose escape would cause concern of a threat to life,
16 property, or national security. Ordinarily, only a small percentage
17 of prisoners shall be classified as MAX."

18 Q. Am I correct when I read that, that the--in this case whose
19 escape would be a threat to life or national security or property is
20 only applicable if the person has a probability of escape?

21 A. I don't know how you can prejudge that, as far as he has a
22 high probability. You have some factors that would lead you to

1 believe he has a high probability of escape, but you can't always be
2 able to predict that, so I wouldn't necessarily agree with that.

3 Q. Okay, so from your standpoint of interpreting the reg,
4 then, it's--how do you determine who has a high probability of
5 escape?

6 A. Well, I mean, of course you have--you look back at the
7 history to see if he had any previous escapes, would be one. If he
8 had--was looking at potentially a long, lengthy sentence, I would
9 consider that a factor to consider whether he was an escape risk or
10 not; but that second portion of the sentence, I would say that it
11 doesn't--to me I don't interpret that as meaning if somebody's
12 likely--highly likely to escape would cause concern to national
13 security; I interpret it as saying if the individual escaped, there
14 would be some national security concerns so.

15 Q. Right. So--and that's what I wanted to make sure I
16 understood. So if the person's a high probability of escape in this
17 case, they won't necessarily be put in MAX unless their escape would
18 also cause a threat to life, property, or national security.

19 A. No, that's not.

20 Q. Is that not how it is?

21 A. No.

22 Q. How is it then?

1 A. If they are--have a high probability of escape, they could
2 be considered and should be considered an escape risk, I think, or
3 maximum custody; and then below that is if their escape--if their
4 escape would be a concern to national security, then that's another
5 reason to consider maximum custody.

6 Q. Okay, and that's how you interpreted that?

7 A. Yes, sir.

8 Q. Okay.

9 Now obviously having a person on maximum custody is a
10 manpower-intensive requirement for a brig, correct?

11 A. Yes, sir.

12 Q. The movement of the detainee requires the entire brig to be
13 locked down?

14 A. Yes, sir.

15 Q. And according to the SECNAV, you're going to have to have
16 at least two guards that accompany the detainee?

17 A. Right; yes, sir.

18 Q. And the detainee's always moved in hand and leg irons.

19 A. When outside of his berthing area, yes, sir.

20 Q. In your experience maximum custody detainees are your
21 violent detainees.

22 A. No, sir.

23 Q. Not in your experience?

1 A. I mean, we have max custody prisoners who are violent, yes,
2 sir, but they're not--they're not all violent.

3 Q. Well that's why I wanted to get an idea from your
4 experience what--who's the typical MAX detainee?

5 A. We--I mean, it runs the--I mean, we have folks there for,
6 you know, surely the aggressive type, you know, the murders, the
7 attempted murders, but, you know, we've had folks max custody, that
8 qualify for max custody for charges such as possession of narcotics
9 with the intent to distribute because we're looking at a very lengthy
10 potential sentence that he could get----

11 Q. Okay.

12 A. ---- that we don't consider that as violent but the
13 potential length of sentence surely was a factor.

14 Q. So if the--so you would agree with me that your violent
15 detainees: the murderers, the rapists, the people who act out, those
16 are going to be probably MAX detainees.

17 A. I would agree with you there.

18 Q. And then if they're not violent, then am I understanding
19 you correctly that it's the length of sentence would be one of the
20 main factors?

21 A. It would be a factor, yes, sir.

22 Q. And what else would for MAX?

1 A. Well, I mean, we talked a few of them already. You know,
2 the--his history, his, you know, his military history; how's he been
3 in the history; does he have any prior convictions----
4 Q. Why military history; why would that be; what----
5 A. Well his----
6 Q. ---- would that tell you?
7 A. ---- his ability to cope and adapt to the military
8 lifestyle, the environment, and so forth. It's structured in the
9 confinement facility, it's a structured environment, so if he's not
10 really coping in the military, then, you know, what are the chances
11 that he's not going to cope in that close, confined area.
12 Q. Okay.
13 A. But, you know, low frustration; intolerance to stress or,
14 you know, frustration. The--we talked about his upbringing, you
15 know, would be a factor that we'd look at----
16 Q. All those seem to be kind of--you would agree with me --
17 like frustration or poor home and family relationships,----
18 A. Uh-huh.
19 Q. ---- I mean, if you have a poor home and family
20 relationship you're not winding up in MAX immediately, right?
21 A. Well I--it all depends, you know.
22 Q. Okay,----
23 A. But if it's not----

1 Q. ---- how does that----
2 A. ---- if it's----
3 Q. ---- coincide with only----
4 A. ---- just that--I mean, not just because you have a bad
5 home life you're going to be in max custody, no, sir.
6 Q. Okay.
7 A. All right.
8 Q. And so if you have a low tolerance for stress,----
9 A. Right.
10 Q. ---- you wouldn't automatically be thrown in MAX, would
11 you?
12 A. That's correct.
13 Q. Okay. So as you look through your--PFC Manning's file, you
14 noted that he was consistently not receiving any disciplinary reports
15 or adverse spot evaluations,----
16 A. Right.
17 Q. ---- correct?
18 A. Yes, sir.
19 Q. So did you note anything in there that indicated that he
20 was dangerous or violent?
21 A. The one thing--the only thing that stuck out to me in that
22 regard was the assault charge, which was, you know, just a generic,

1 you know, Article 92, I think, assault--or, no. I forget the
2 article, but it was assault with no additional information in there.

3 Q. And that happened when he was in Kuwait, correct?

4 A. That was part of the charge sheet that--or confinement
5 order that came with him.

6 Q. Did you notice any behavior that would indicate that he
7 would be dangerous or violent while he was at Quantico?

8 A. Maybe not dangerous. I think violent--I don't think I saw
9 anything that would lead me to believe he was violent or would be
10 violent to anyone else, no, sir.

11 Q. Did you see anything, other than, I guess, the idea that he
12 might be looking at a lot of time,----

13 A. Right.

14 Q. ---- did you see anything to indicate behavior-wise that he
15 was an escape risk?

16 A. Not that he was an escape risk, per se.

17 Q. And, in fact, didn't you see from the counselor's reports
18 that he was always polite, courteous, and respectful to the brig
19 staff?

20 A. I did--I did read that on several occasions.

21 Q. Now at the time that you evaluated the determination for
22 MAX and POI, you were believing that the brig was consistently

1 reviewing it by a classification and assignment board to determine if
2 it was appropriate, correct?

3 A. Yes, sir.

4 Q. And we talked about already the problem with the C&A boards
5 if the counselor served on the C&A board, right?

6 A. Right; yes, sir.

7 Q. Were you also aware that the Brig OIC in this case, Chief
8 Averhart, issued an order that PFC Manning would remain in MAX and
9 POI until the conclusion of his 706 board?

10 A. No, sir.

11 Q. So you didn't see that in any of the [pause]--any of the--
12 did you actually--let me show you something here, Enclosure 22 of
13 Appellate Exhibit 259. Did you ever see weekly progress reports?
14 Did they show you those?

15 A. I don't think I saw the progress reports, sir.

16 Q. [Handed exhibit to the witness] Can you----

17 A. No.

18 Q. ---- take a look at that and tell me if you've seen that
19 before?

20 A. [Reviewed exhibit] No, sir; it does not look familiar to
21 me.

22 Q. All right. I'm turning to page 65 of 109 within Enclosure
23 22. Can you read where I'm pointing to on paragraph 2?

1 A. [Did as directed] "The Brig OIC approves and directs that
2 said named detainee remain in a heightened security status, i.e.,
3 Prevention of Injury, until said named detainee completes the pending
4 706 sanity board."

5 Q. Now as a Marine reading that, does that sound like an order
6 or a suggestion?

7 A. That sounds pretty direct to me, sir, as an order.
8 CDC[MR. COOMBS]: All right, and retrieving Enclosure 22.

9 Q. So as an order, if the Brig OIC gives that order, how do
10 you think that might impact the legitimacy of the classification and
11 assignment board?

12 A. It might have some influence. You know, I would hope that
13 maybe as a counselor or the chair of that C&A board that, you know,
14 someone would speak to the OIC and say, you know, maybe this--we
15 can't do that or shouldn't do this but----

16 Q. Why would you say that?

17 A. Well I think it's prejudging. I mean, it's--you know,
18 these C&A boards should be a culmination of information that's
19 gathered on a continuous basis with--you know, potentially changes
20 could happen, so to go out and publish something like that to me
21 says, you know, you've made up your mind; why are we going through
22 the motions here?

1 Q. And--now going back to your report [pause], okay, so it
2 should be 439E. In this report the questions you get, Question A:
3 Are the conditions of PFC Manning's confinement authorized by
4 applicable Navy and Marine Corps regulations? And you respond to
5 that yes; is that correct?

6 A. Right; yes, sir.

7 Q. And am I correct in saying that basically what you're
8 saying here is that MAX and POI where--what PFC Manning is being held
9 in,----

10 A. Right.

11 Q. ---- is authorized under Navy regulations?

12 A. Yes, sir.

13 Q. So you're not making at this point a determination whether
14 or not that was appropriate?

15 A. I'm answering the question of whether he had abused his
16 authority----

17 Q. No, eventually, but I'm saying----

18 A. Oh, okay.

19 Q. ---- within Question 2A, you're just--you're just making an
20 answer of that's a custody status and classification that is
21 permitted----

22 A. Right; yes, sir----

23 Q. ---- under the regs.

1 A. ---- correct.

2 Q. Okay. Now, Question 2B: Did Chief Warrant Officer 4
3 Averhart abuse his discretion in classifying PFC Manning as a maximum
4 custody detainee? You say no and then you reference what the brig
5 officer's authority is and how the brig officer can accomplish that
6 and then you end up at the bottom of that section, "In this case, the
7 CO had a variety of supplemental information provided to him and his
8 staff from Manning's command and previous confinement facility that
9 they also considered."

10 A. Right.

11 Q. Okay. So from this question, are you saying--did you --I
12 want to make sure I understand your determination--are you saying
13 that Chief Averhart had the authority to do what he did or are you
14 saying you agree with Chief Averhart's decision?

15 A. I'm saying that Chief Warrant Officer Averhart had the
16 authority to make PFC Manning a maximum custody detainee.

17 Q. And so are you, from your mind, are you stepping into Chief
18 Averhart's shoes and looking at everything and saying, "I agree with
19 that," or are you just simply saying, "You have the authority to make
20 that determination"?

21 A. No, I think, because I mentioned that there was some
22 supplemental information there that--that I saw that probably would

1 have been considered, you know, as a maximum cus--you know, would
2 have qualified as being a maximum custody individual.

3 Q. So your testimony now is that you were agreeing that MAX
4 was the appropriate classification?

5 A. Yes, considering--considering what he had to go off of,
6 yes.

7 Q. And what he had to go off of was the stuff from Kuwait; is
8 that correct?

9 A. That was part of it, yes, sir.

10 Q. And then what else?

11 A. I believe the confinement order that he had and the charges
12 that he was pending.

13 Q. And was this determination that it's appropriate for MAX,
14 was that the determination at the time that Manning was put in MAX;
15 is that what you're saying?

16 A. [No response.]

17 Q. Or are you saying from the--from the time he was in MAX
18 from July 29th all the way, you know, a little over 6 months later -
19 ---

20 A. Right.

21 Q. ---- when you look at it that MAX is still appropriate?

22 A. Yes, sir, I--through the period of time.

23 Q. You think MAX was appropriate for the----

1 A. Correct.

2 Q. ---- entire time?

3 A. Yes, sir.

4 Q. And can you tell me why?

5 A. I think really, you know, the charges never changed. Well

6 they--there was some additional charges I think, if I'm not mistaken,

7 so that part of it never changed. I mean, his behavior, yeah, that

8 was a factor that they considered and, generally speaking, it was

9 above board, I feel; and, again, the fact that he had some pretty

10 serious charges that I would probably consider him if he had escaped

11 a concern for national security, I feel that that's probably why I

12 would have felt comfortable saying I just--I believe maximum custody

13 is appropriate.

14 Q. Okay, so from what you saw, if his charges were not what

15 he's charged with but he was your standard deserter that----

16 A. Right.

17 Q. ---- was brought back to the facility, would you have--

18 based upon everything that you know and let's say--let's say he was a

19 deserter from Kuwait, everything that you read in Kuwait happened,---

20 -

21 A. Right.

22 Q. ---- okay, but his charges were desertion, not what he's

23 charged with,----

1 A. Sure.

2 Q. ---- would you then say MAX was appropriate?

3 A. And his behavior was such as that as it was for Manning, I

4 probably would say that his custody probably could have been, you

5 know, dropped to medium inside.

6 Q. And that would be the lowest that you could be as a

7 pretrial, right?

8 A. That's correct, sir.

9 Q. Okay. Well we'll talk now about POI for a moment.

10 [The assistant trial counsel stood up.]

11 MJ: Yes?

12 ATC[CPT VON ELTEN]: United States requests a recess, ma'am.

13 MJ: How long?

14 ATC[CPT VON ELTEN]: 15 minutes.

15 MJ: Any objection?

16 CDC[MR. COOMBS]: No objection.

17 MJ: Court is in recess until a quarter after 4 or 1600 military

18 time.

19 **[The Article 39(a) session recessed at 1601, 5 December 2012.]**

20 **[The Article 39(a) session was called to order at 1620, 5 December**

21 **2012.]**

1 MJ: This Article 39(a) session is called to order. Let the
2 record reflect all parties present when the court last recessed are
3 again present in court. The witness is on the witness stand.

4 Proceed, Mr. Coombs.

5 CDC[MR. COOMBS]: Thank you, ma'am.

6 **CROSS-EXAMINATION CONTINUED**

7 **Questions by the civilian defense counsel [MR. Coombs]:**

8 Q. Chief Galaviz, I remind you, you're still under oath.

9 A. Thank you.

10 Q. Chief, now I'd like to talk about the brig's determination
11 to place PFC Manning in Prevention of Injury, okay?

12 A. Yes, sir.

13 Q. Now Prevention of Injury is not a status that's recognized
14 within the SECNAV Instruction, correct?

15 A. Not formally as a status, no, sir.

16 Q. Where does it come from?

17 A. I believe Prevention of Injury status comes from the
18 obligation that the brig staff has to prevent the injury or to stop -
19 -the prevention of injury of an individual.

20 Q. In your opinion how does Prevention of Injury differ from
21 Suicide Risk?

22 A. I believe several reasons. It's less intrusive, for one.
23 The obvious one would be the one-on-one supervision or maybe even the

1 5-minute supervision. The individual is allowed to keep more
2 clothing on him throughout the day, if I'm not mistaken. Those are
3 probably the--and since it's a locally administered, you know, set of
4 restrictions, it kind of varies from facility to facility. I mean, I
5 don't publish policy to say this is what POI is or is not. It's done
6 locally at the commander's level there, so it could vary, but those
7 three issues, I think, are the big--the big differences.

8 Q. Now I want to share with you a SECNAV Instruction and ask
9 you for your opinion on a section there.

10 [To military judge] Again, ma'am, Enclosure 47 and it would
11 start at page 103 of 388.

12 Now, Chief, if you see at the bottom of page 103, what's
13 the category there?

14 A. Excuse me, Special Quarters.

15 Q. And do you see that if you flip the page over to the very
16 next page, page 104, the SECNAV sort of mentions Prevention of Injury
17 in this section on Special Quarters; is that correct?

18 A. Correct.

19 Q. And the section says, "a. Some prisoners"--quote, Some
20 prisoners require additional supervision and attention due to
21 personality disorders, behavior abnormalities, risk of suicide or
22 violence, or other character traits. If required to preserve order,
23 the BRIG Os or, in their absence, the brig duty officers or duty brig

1 supervisors may authorize Special Quarters for such prisoners for
2 purposes of control, prevention of injury to themselves or to others,
3 and the orderly and safe administration of the confinement facility,
4 end quote.

5 Do you see that?

6 A. Yes, sir.

7 Q. And other than that Prevention of Injury, it's mentioned
8 one other place in definitions, but am I correct that this is where
9 the Prevention of Injury authorization at least within the SECNAV may
10 come from?

11 A. Right; yes, sir.

12 Q. Now if you go down under the "Procedures" further down on
13 that page, I believe, it talks about "Procedures" and it says that,
14 "All prisoners in Special Quarters shall be under continual
15 supervision. Special precautions shall be taken in equipping,
16 inspecting, and supervising their quarters to prevent escapes,
17 self-injury, and other serious incidents. They shall be sighted at
18 least once every 15 minutes by a staff member and shall be visited
19 daily by a member of the medical department and the BRIG O. In
20 addition, it is highly desirable that prisoners in Special Quarters
21 be visited daily by a chaplain."

22 Do you see that? And I guess that's on page 105.

23 A. Correct; yes, sir.

1 Q. Now just to clarify, for me this means that if you're going
2 to put someone in POI you need to have a medical officer see them
3 daily under the SECNAV?

4 A. I think it's--it's a member of the medical department,----

5 Q. Yeah, I see.

6 A. ---- so that could be a corpsman, you know, administering
7 medication call, so it's not necessarily a doctor. It is a member of
8 the medical staff.

9 Q. Okay. So when it says, "...shall be visited daily by a
10 member of the medical department," what is that--"and the BRIG O,"
11 what is that supposed to be?

12 A. I think it's, you know, they're going to go down there to
13 check on his health and, you know, welfare and see how he's doing,
14 really.

15 Q. So every day, a requirement to do that.

16 A. Right.

17 Q. And then it says it's highly desirable that, you know,
18 prisoners are visited by a chaplain, so I guess that would mean that
19 it's kind of the best practices to have a chaplain down there.

20 A. Sure; yes, sir.

21 Q. Now why do we have these requirements--these, you know, one
22 of them being a "shall" and the other being kind of a "highly
23 desirable" for this Special Quarters section?

1 A. Well in most facilities, by design they're designed in open
2 bays and then you've also got a set of cell--individual cells that is
3 typically reserved or identified as their Special Quarters area.

4 Quantico is unique in this manner in that both general
5 population and those requiring additional supervision were all
6 berthed in the same area, individual cells.

7 Q. Uh-huh.

8 A. So the individuals in general population, if they were out
9 in a dormitory, could get out, see medical on their own on a daily
10 basis; and if they had a chaplain or a religious, you know,
11 chaplain's assistant available at the staff they could probably see
12 him when they wanted to.

13 Q. And if I could stop you there just--even though, I guess,
14 the--Quantico is slightly different in that everyone was housed in
15 what was called the----

16 A. Right.

17 Q. ---- "Special Quarters," was it your understanding that if
18 they were MDI that they could still visit medical and----

19 A. Correct.

20 Q. ---- visit the chaplain as----

21 A. Correct. If they were there,----

22 Q. ---- they would if they're----

23 A. ---- yes, sir.

1 Q. Okay. So I guess this still would apply, even in the case
2 of Quantico, would it not?

3 A. It would--it would apply to those that fell under the, you
4 know, heightened security, you know, procedures.

5 Q. In looking at these requirements, and there are quite a few
6 of them as you go through there, it seems to be that these
7 requirements suggest a kind of fairly temporary status; would you
8 agree?

9 A. [Pause] I--temporary to--is a relative--I mean, I --for
10 every 30 days that someone's in Special Quarters they're required to
11 be seen again, you know, by the C&A board to determine their
12 continuation in Special Quarters, so temporary--most cases the folks
13 are in there for disciplinary reasons or things of----

14 Q. Well that would be admin seg, though, right?

15 A. Correct. Well and, you know, somebody in POI or Suicide
16 Risk is considered administrative segregation. It is not
17 disciplinary,----

18 Q. Right.

19 A. ---- so--but, yes, as things change, behavior is observed;
20 positive behavior is observed; charges are dropped, added; you know,
21 custody changes; program changes, yes, this could be temporary but
22 not always the case, sir.

1 Q. And you testified on direct that you had seen, I guess,
2 somebody be in POI, I think you said, for a year, over a year or----

3 A. Yes, sir.

4 Q. ---- something like that?

5 A. Correct; yes, sir.

6 Q. And you tell me if you don't recall, but when I asked you
7 that question, you said about a month or so was the longest you saw
8 someone in POI.

9 A. No, sir. I don't recall saying that. Maybe I
10 misunderstood the question,----

11 Q. Okay.

12 A. ---- but, yeah, there have been folks on POI for a
13 significant amount of time.

14 Q. All right, so let's talk about that for just a moment. How
15 many--when you say you've seen people on POI for an extended period
16 of time,----

17 A. Uh-huh.

18 Q. ---- what's the longest you've seen them on POI?

19 A. That's hard to tell, sir; that--I mean, that was--we're
20 talking maybe 10 years ago that that was at a confinement facility.

21 Q. And what was your understanding as to the normal amount of
22 time that a detainee might be on POI?

1 A. That's nothing we ever put a timeline on, sir, because it's
2 constantly changing.

3 Q. The person that you recall being on POI for a long period
4 of time, do you recall any facts from that instance?

5 A. He may have been an individual--if I'm not mistaken, may
6 have been an individual who was, you know, would continually just,
7 you know, cut himself just to get some attention and, I mean, and
8 leave it at that, so we kind of, you know, the doctors felt he was
9 not suicidal, because he certainly probably could have done that long
10 before, but we still needed to keep an eye on him.

11 Q. So is that the person that you recall being on POI for a
12 long time?

13 A. I believe so; yes, sir.

14 Q. So the conduct that that person was doing was constantly
15 cutting themselves?

16 A. Yes, sir.

17 Q. Did you see anything in this case, with PFC Manning, from
18 your review to suggest that he was harming himself while at Quantico?

19 A. No, sir.

20 Q. Now you said you reviewed the brig's justification as to
21 why they were keeping PFC Manning on the increased level of
22 supervision, the POI, correct?

23 A. Right.

1 Q. And at least from our discussion the main justifications
2 that you recall was the initial paperwork from the Kuwait time
3 period?

4 A. Uh-huh, correct.

5 Q. And then apparently some observations of him while he was
6 at Quantico.

7 A. Right; yes, sir.

8 Q. And what do you recall from the observations at Quantico,
9 if anything?

10 A. I think the way the brig staff worded it was some
11 behavioral abnormalities or--at one point that I think they escorted
12 him to rec call indoors and it was maybe an anxiety attack that took
13 place or something like that and just some interaction--not so much
14 that they had interaction with him but the observations that they had
15 of PFC Manning in his cell just not behaving the way they felt was
16 normal.

17 Q. And did they show you any documentation of that or did they
18 just tell you about that?

19 A. I think that may have just--I think I saw it written,
20 maybe, in some counselor notes or something like that; yes, sir.

21 Q. And you had testified earlier that you don't recall seeing
22 any of the brig psychiatrist reports?

1 A. Only reference to psychiatry notes was nothing more than
2 what was made by the--notations made by the counselor; that the
3 psychiatrist had seen him and made this recommendation or that.

4 Q. Now if a forensic psychiatrist is seeing a detainee and is
5 recommending that that detainee be taken off of POI, would you agree
6 that that recommendation should be followed?

7 A. By regulations it's not required. I mean, it's certainly
8 not. I would say that it should be considered, but I don't feel the
9 brig staff is obligated to follow that recommendation.

10 Q. All right, and do you--and, again, you can tell me either I
11 misunderstood you or whatnot, but do you recall telling me that you
12 believe that the POI status was kind of in the mental health realm?

13 A. I think there's a taste of it in there, you know, but
14 because, again, you know, and I probably said that, but I do also
15 feel that the correctional specialists who were there with him, you
16 know, daily, they have recommendations as well. The doctor, I
17 thought, saw him maybe once a week or maybe every other week, and so
18 I definitely think that the brig staff should have--should consider
19 the recommendations, but I don't feel they're obligated to take that
20 and remove him from that status.

21 Q. Do you recall telling me that you would say that POI is a
22 standard that should be controlled by the mental health
23 professionals?

1 A. I may have misunderstood your question, sir, but I do--I do
2 believe that that should be limited to the Suicide Risk.

3 Q. All right, now the brig kept PFC Manning on Suicide Risk or
4 Prevention of Injury for his entire time at Quantico, with the
5 exception of a couple times they put him in Suicide Risk. You had
6 earlier told me that you had never seen anyone on POI for that length
7 of time, but if I understand you correctly, now you've got one other
8 person that you can recall that was on----

9 A. Hmm.

10 Q. ---- POI for that length of time?

11 A. I don't recall telling you that. I've never seen anybody
12 there for that length of time on POI status.

13 Q. You don't recall saying that?

14 A. No, sir.

15 Q. Okay. Other than this one person that was cutting
16 themselves, do you recall someone being on POI for the length of time
17 that PFC Manning was?

18 A. Not that I can recall; no, sir.

19 Q. Now if the Brig OIC ignored the recommendations of their--
20 of his mental health professional because he didn't trust the
21 opinions of the mental health professional, would you see that as a
22 problem?

23 A. Yes, sir.

1 Q. And I think you told me that you would expect the Brig OIC
2 to seek a second opinion then.

3 A. Yes, sir.

4 Q. And then I asked you if the Brig OIC did not seek a second
5 opinion and just simply chose to ignore the first opinion or even if
6 he received a second opinion from a separate brig psychiatrist and he
7 chose to ignore that, you indicated that you would perceive this as a
8 problem.

9 A. That would be if it was for, you know, recommendations,
10 Suicide Risk, yeah; but again, I don't--with the POI status, I don't
11 see how, I mean, how that would be appropriate there.

12 Q. Okay, so if the Brig OIC ignored the recommendations of his
13 mental health professionals because he didn't trust them on POI,----

14 A. Right.

15 Q. ---- you would not see that as a problem or you would see
16 that as a problem?

17 A. Well I think the trust factor is probably still a problem,
18 yes, sir, regardless.

19 Q. And I think you told me--and you can tell me if you don't
20 remember saying this or if you don't believe you said it--that you
21 believe that this is a problem because your corrections policy states
22 that if mental--if a mental health officer determines a prisoner is
23 not a risk of self-harm that this determination should be followed.

1 A. I believe the SECNAV Instruction says if he's not suicidal
2 that he should be taken off.

3 Q. So you believe that's limited to suicidal and not just a
4 risk of self-harm?

5 A. Yes, sir.

6 Q. And if you would, turn to page 105 of Enclosure 47 that's
7 in front of you.

8 A. [Did as directed.]

9 Q. The SECNAV authorizes an OIC to put a detainee in Suicide
10 Risk if that detainee threatens suicide or makes a suicidal gesture.
11 Do you see that?

12 A. Yes, sir.

13 Q. What is a "suicidal gesture" from your position as a
14 proponent of the reg?

15 A. A "gesture" could be an action that he takes that could be
16 perceived as, you know, him wanting to harm himself; maybe a
17 statement that he makes that could be interpreted as him wanting to
18 harm himself or have the potential to harm himself is the way I would
19 interpret a "gesture."

20 Q. In your opinion would slapping your hands against your head
21 out of frustration be a suicidal gesture?

1 A. I think--it's hard for me to say, you know, not being
2 physically there to see exactly. I mean, I couldn't say yes or no,
3 sir.

4 Q. All right. So if you saw somebody slap their hands against
5 their head out of frustration, just that alone if you were actually
6 there and saw that,----

7 A. Right.

8 Q. ---- would you perceive that as a suicidal gesture?

9 A. Again, the situation would dictate. You know, if that's
10 all that happened, probably not, but I'm sure there was events that
11 led that--to that frustration.

12 Q. And if a brig psychiatrist was there at the time and said
13 that it was not a suicidal--there's not a suicide risk,----

14 A. Right.

15 Q. ---- would a Brig OIC be authorized to place a detainee on
16 Suicide Risk?

17 A. If the medical officer said that he wasn't suicidal, then I
18 would say no.

19 Q. In your findings, you note on two occasions where you
20 believe Chief Averhart failed to remove PFC Manning from Suicide Risk
21 when a mental health officer determined that it was no longer
22 warranted, correct?

23 A. Yes, sir.

1 Q. And you cited the SECNAV Instruction, stating that when
2 detainees are no longer considered to be a suicide risk by a mental
3 health provider or professional they shall be removed.

4 A. Right.

5 Q. And as the proponent of the SECNAV Instruction on
6 corrections, can you make changes to this instruction if you want to?

7 A. Yes, sir. It would take some work, but, yes, sir.

8 Q. And your office also is charged with fielding questions
9 about interpretations of that instruction, correct?

10 A. Yes, sir.

11 Q. And I imagine because you're the proponent you would
12 provide the final say.

13 A. Right; yes, sir.

14 Q. With regards to the section that states, "When prisoners
15 are no longer considered to be suicide risks by a medical officer,
16 they shall be returned to appropriate quarters," if I read that
17 section and say the word "shall" means within a couple of days,----

18 A. Right.

19 Q. ---- am I reading that correct?

20 A. I don't think that's the spirit and intent of this
21 instruction.

1 Q. Would it be correct to say that the word "shall" means
2 hours, if not minutes, after the determination's made we need to move
3 the detainee to appropriate quarters?

4 A. I think that's fairly accurate, sir.

5 Q. And in your opinion, Chief Averhart violated that on two
6 separate occasions, correct?

7 A. Yes, sir.

8 Q. He violated it on 6 August when he failed to remove PFC
9 Manning on that day from Suicide Risk.

10 A. Right.

11 Q. And he didn't remove PFC Manning from Suicide Risk until 11
12 August, correct?

13 A. I forget the dates, but, yes, sir. It was a couple days
14 later.

15 Q. And then again on 18 January, and in this instance when he
16 received an opinion on that day that Suicide Risk was not required,
17 then if I'm understanding you correctly, he would have to remove him
18 from Suicide Risk on 18 January.

19 A. Correct; yes, sir.

20 Q. And your report indicates that he did not remove him until
21 21 January?

22 A. [Reviewing exhibit] Yes, sir.

1 Q. And I believe there is some documentation that actually
2 suggests and there's some proof that he was actually removed on
3 20 January from Suicide Risk.

4 A. Okay.

5 Q. So that could be just a--either a typo or maybe you didn't
6 see the right document,----

7 A. Right; yes,----

8 Q. ---- correct?

9 A. ---- sir.

10 Q. So with regards to the determination to place PFC Manning
11 on POI, much like with MAX, are you saying that you agree that based
12 upon what you saw, the stuff in Kuwait, and the various behaviors
13 that you were informed of verbally that that would warrant putting
14 somebody in POI; or are you just simply saying that Chief Averhart
15 did not violate his discretion or abuse his discretion in placing PFC
16 Manning on POI?

17 A. I think that looking at the total picture, to include what
18 happened in Kuwait and currently, you know, documentation of those
19 behavioral abnormalities that the brig cited, I think to me would
20 have concerned me a little bit that I felt I probably would have kept
21 him in an elevated, you know, supervised state; yes, sir.

22 Q. And that would be POI?

23 A. Yes, sir.

1 Q. And I know you said you didn't have the opportunity to
2 actually see the mental health evals, but now factoring those in, if
3 you were receiving mental health evals week after week saying that
4 PFC Manning is not a risk of self-harm; remove him from POI, would
5 you still, after seeing everything, believe that PFC Manning needed
6 to be on POI?

7 A. I mean, I haven't seen everything, I'm sure, so I couldn't
8 necessarily say that. I do--and I will say again that, you know, the
9 behavioral abnormalities that were noted to me were concerning,
10 especially just coming off of a Suicide Risk, you know, status to me.

11 Q. Were you aware that the mental health professionals were
12 informed of those behaviors and actually said that none of those
13 behaviors were problematic?

14 A. No, sir; no.

15 Q. Were you also aware that the brig personnel, the guards who
16 were watching PFC Manning, said that that behavior was pretty much
17 normal for people who were on MAX?

18 A. I'm not aware of that; no, sir.

19 Q. And if you were aware of that, would that change your
20 opinion at all regarding whether or not POI would be appropriate?

21 A. No, sir. I mean I don't--I don't necessarily agree with
22 that statement that that's normal for folks in maximum custody. I
23 don't agree with that.

1 Q. Okay, so if you were told by your guards, "Hey, look.
2 Everyone else kind of does a similar activity; PFC Manning's no
3 different,"----

4 A. Right.

5 Q. ---- and you're also told by your mental health
6 professionals that this behavior is not problematic,----

7 A. Right.

8 Q. ---- that wouldn't change your opinion at all?

9 A. I mean, I certainly would, again, consider it, but I would
10 not feel obligated to take him off.

11 Q. Okay.

12 So now if I could, I want to talk about an incident with
13 CW2 Barnes, where she ordered PFC Manning to remove his underwear at
14 night.

15 A. Yes, sir.

16 Q. Do you recall that?

17 A. I recall the incident, yes, sir.

18 Q. And what do you recall about that?

19 A. I'm not sure what the circumstances were. I just know that
20 there was a statement made that she felt justified in removing his
21 underwear from him and that's pretty much the extent of --

1 Q. Do you recall sending a copy of a *New York Times* article
2 from the *Early Bird* to your bosses on 4 March about the decision to
3 remove PFC Manning's underwear?

4 A. It doesn't surprise me if I would have, sir, but I don't
5 recall sending it to them.

6 [The civilian defense counsel handed a document to the court
7 reporter. The court reporter marked the document as AE 439F and
8 handed it to the civilian defense counsel.]

9 CDC[MR. COOMBS]: I'm retrieving the copy of Appellate Exhibit
10 439E, and I'm handing the witness what's been marked Appellate
11 Exhibit 439Fox.

12 Q. Now before we talk about the *New York Times* article, do you
13 recall sending this e-mail to Chief Barnes and Master Sergeant
14 Papakie?

15 A. [Reviewed exhibit] I don't recall sending it, but it looks
16 like I did, sir.

17 Q. Do you recall what you were thinking about at that point at
18 all?

19 A. I guess trying to understand what, you know, as I wrote, an
20 understanding of what, you know, what--what would have caused this?
21 I mean, you know, from their eyes.

22 Q. Did you ever speak with CW2 Barnes or Master Sergeant
23 Papakie after sending this e-mail?

1 A. I probably did. If I asked them to give me a call, I'm
2 sure they probably did, sir.

3 Q. But you don't recall any--you don't recall having that
4 conversation with them?

5 A. No, sir.

6 [The civilian defense counsel handed a document to the court
7 reporter. The court reporter marked the document as AE 439G and
8 handed it to the civilian defense counsel.]

9 CDC[MR. COOMBS]: I'm retrieving from the witness 439F and
10 handing the witness 439G.

11 Q. If you would, turn to the second page of that. Do you see
12 the March 4th e-mail from you to several people, notably your boss,
13 Colonel Wright, about the *Early Bird* article?

14 A. Right; yes, sir.

15 Q. And then do you see Lieutenant Colonel Wright's e-mail to
16 Colonel Oltman right above there where you're cc'd?

17 A. [Reviewed exhibit] Yes, sir.

18 Q. Do you recall Lieutenant Colonel Wright sending that e-mail
19 to Colonel Oltman?

20 A. I think so; yes, sir.

21 Q. And prior to Lieutenant Colonel Wright sending that e-mail,
22 did you and he have a conversation?

1 A. I believe so. I believe we probably did, and it was
2 probably after either Master Sergeant Papakie or Chief Warrant
3 Officer Barnes gave me a call, so----

4 Q. Right. So I'm looking at this and I just want to see from
5 your perspective how you would interpret this coming from your boss.
6 He states, "I just want to pass on to you a professional opinion from
7 PSL..." And "PSL" is what?

8 A. Physical security and law enforcement.

9 Q. "...that we have some concerns about recent, within the
10 last 2 to 3 days, decisions made by the commanding officer of the
11 Quantico Brig. To take measures that are consistent with suicide
12 watch but not officially place that person in a suicide watch status
13 is inconsistent with the way we are supposed to do business, but I
14 understand there may be some concern about taking actions which may
15 result in another Article 30--Article 138 complaint, but if we are
16 doing business the way we are supposed to, there's nothing to worry
17 about." So Lieutenant Colonel Wright here is saying that we are not
18 allowed to remove underwear unless you place him in Suicide Risk; is
19 that what he's saying here?

20 A. That's--yes, sir.

21 Q. And why would that be?

22 A. Well, again, Suicide Risk is a higher, you know, level of
23 supervision, and when you take steps to remove all clothing from an

1 individual, to me that is taking steps to put somebody on Suicide
2 Risk status.

3 Q. So you wouldn't view that as just kind of like a POI-plus
4 status or something like that?

5 A. No, sir.

6 Q. So in this instance, do you share the opinion with
7 Lieutenant Colonel Wright that you shouldn't be removing clothing
8 from a detainee and not placing that detainee in Suicide Risk?

9 A. Yes, sir.

10 Q. Now for communications, what did the brig tell you about
11 whether or not PFC Manning was allowed to talk to people, other
12 detainees?

13 A. I don't recall having that specific conversation with them.
14 I had just, I guess, assumed in my own part that, you know, because
15 he was Special Quarters that they didn't authorize loud
16 conversations; and since there was nobody next to his cell, I would
17 assume they weren't allowing them to communicate to individuals or
18 with individuals two or three cells down.

19 Q. And I just want to give you an excerpt of Enclosure 47
20 [pause] that you have in front of you, but it's kind of a second
21 volume so [handed exhibit to witness]. So this still is Enclosure 47
22 of Appellate Exhibit 259.

1 From your review when you went to go see PFC Manning, he
2 initially only got 20 minutes of sunshine call, correct?

3 A. I don't recall, sir, without actually looking up what his
4 limits were.

5 Q. All right, with regards to I think you said that every
6 detainee is supposed to get 1 hour of rec at least?

7 A. Yes, sir.

8 Q. How much of that time, if you're general population, if
9 you're MDI, how much do you get when you add up library, TV, rec,
10 correspondence time, that type of stuff?

11 A. I'm not sure. In most case--in most facilities they run in
12 conjunction. You can do recreation call at the same time you go to
13 the library and check out books and so forth or read in the back, but
14 probably I would assume that, you know, library call, you may allow
15 them to go into the library for half an hour to select some books and
16 bring them back to their berthing area; you know, television call, it
17 kind of varies, as well; but in open bays, it's usually a few hours
18 in the evening. Special Quarters, especially for maximum custody, it
19 depends on how many MAX custodies, you know, have to see TV, because
20 then they, you know, cut the time accordingly and allow them to
21 spread the wealth there. I would probably say, you know, for library
22 call, probably an extra half hour for library call.

1 Q. Okay, and then I guess the--you've got the TV, the rec, and
2 the correspondence time all adding up to that----

3 A. Yes, sir.

4 Q. ---- 1 hour, at least, of rec?

5 A. Right. Well with the general population, they could
6 probably have a little bit more time for correspondence and so forth
7 after they come back in from recreation call.

8 Q. Now, the reason why I gave you the excerpt from Appellate
9 Exhibit--excuse me, of Enclosure 47 of Appellate Exhibit 259 is I
10 just wanted to go down and compare disciplinary segregation----

11 A. Uh-huh.

12 Q. ---- with what PFC Manning was held under, okay?

13 A. Okay.

14 Q. So if you--first of all, detainees in disciplinary
15 segregation, according to the SECNAV, they're supposed to get 1 hour
16 of recreation call; is that correct?

17 A. In disciplinary segregation?

18 Q. [Nodded head indicating an affirmative response.]

19 A. Unless that privilege has been revoked for whatever reason,
20 I think the SECNAV requires them to have a 20-minute sunshine call.

21 Q. Is that--is that what you believe?

22 A. Yes, sir. [Reviewed exhibit] Let's see here [reviewed
23 exhibit].

1 Q. I believe it's Section 5105 is the section I'm looking for.
2 A. [Reviewed exhibit] One-hour exercise period, okay.
3 Q. So 1 hour within this----
4 A. Yes, sir.
5 Q. Okay. Now if you turn to the second page which starts with
6 "echo," so it's 3(echo).
7 A. Okay.
8 Q. Do you see "Disciplinary Segregation" there?
9 A. [Reviewed document] What page are we on again?
10 Q. This would be on the bottom, 5-28, and it's 3(echo).
11 A. Okay; yes, sir.
12 Q. All right, so it basically says here, you know,
13 "Disciplinary segregation is considered serious from an institutional
14 standpoint," correct?
15 A. Yes, sir.
16 Q. And, again, I imagine you wouldn't want to put a person on
17 disciplinary segregation unless they absolutely had to be on it.
18 A. Correct; yes, sir.
19 Q. If we go down to (echo)(1), take a look at that and from
20 your memory can you compare that with PFC Manning and his conditions?
21 A. [Reviewed exhibit] Okay, I mean, there's a couple of small
22 differences here.
23 Q. And what would be the small differences?

1 A. Privileges specifically identified shall be denied. I
2 think in Manning's case, I think the privileges--I don't think they
3 were denied. I think he was still authorized to watch TV, to get
4 books from the library, to go out to recreation call, to meet with
5 the clergy if they came down, so I don't--I don't necessarily agree
6 with the privileges portion.

7 Q. Okay. How about remaining in his cell at all times except
8 when specified for like rec call and whatnot?

9 A. Yes, sir, and that would be based on his custody
10 classification.

11 Q. And he was basically given sunshine call, do you recall
12 that, for his first 6 months or so only?

13 A. No, sir. No. I mean, Suicide Risk or POI should have
14 recreation call. I think the sunshine call is restricted to
15 disciplinary status.

16 Q. So if the facts were that from July 29th, 2010, to December
17 10th of 2010 PFC Manning only received 20 minutes of sunshine call,
18 would you view that as problematic?

19 A. Unless the brig could justify why those periods were cut
20 short, I mean, but he should--should have received an hour of
21 recreation call.

22 Q. And what if the justification was just simply that's what
23 the CO directed?

1 A. I mean, again, I don't know what the CO was thinking. It
2 could have been because the CO knew that he was short of staff; I
3 don't know.

4 MJ: Now can I interrupt and just ask a question. I'm still
5 having confusion on what is "recreation call" and what is "sunshine
6 call" and do the two overlap or not?

7 WIT: [Appeared to chuckle.]

8 Q. Yeah, so for sunshine call,----

9 A. Sure.

10 Q. ---- what--sunshine call is if I--and correct me if I'm
11 wrong--that would be when you're taking somebody out that's in either
12 disciplinary segregation----

13 A. Right.

14 Q. ---- or MAX because of disciplinary segregation and they're
15 allowed just to be outside for 20 minutes.

16 A. Correct.

17 Q. They're still in full restraints.

18 A. Correct. I mean, we put them in the recreation, you know,
19 I say "booth" but it's a--like a half-court-type thing, enclosed area
20 and we can remove the restraints.

21 Q. Earlier we had testimony that the brig did not remove the
22 restraints----

23 A. Okay.

1 Q. ---- when he was placed out----

2 A. Right.

3 Q. ---- outside.

4 A. Okay.

5 Q. Would that be unusual?

6 A. No. I mean it's--it's again, if that's the brig's policy,
7 then, you know, you certainly can if he's back inside a security
8 perimeter somewhere, but the brig is not necessarily obligated to do
9 that.

10 Q. And then the--that was outdoor, basically being outside for
11 20 minutes; and then the indoor 20-minute sunshine call, we had
12 testimony where they would remove the belt and the leg restraints but
13 then they would reapply the hand restraints----

14 A. Right.

15 Q. ---- and allow the detainee, for 20 minutes, to ride a bike
16 or just walk around.

17 A. Sure.

18 Q. And, again, what would be the purpose of a sunshine call
19 for somebody on disciplinary segregation?

20 A. Just to get them out--outside of the facility, get them
21 some fresh air, because he would not be participating in recreation
22 call.

23 Q. All right.

1 Then now for recreation call, am I correct that normally
2 that's 1 hour?

3 A. Correct.

4 Q. And when you're on recreation call, you normally wouldn't
5 be in any restraints, right?

6 A. Correct.

7 Q. And at that point, you would--if you're outside, you'd be
8 permitted to do what?

9 A. You know, if you're general population, you know, you could
10 jog around the field; you could play volleyball; play basketball
11 maybe; play cards out there on the picnic tables. If you're max
12 custody, you would be placed in the basket--the half-court--enclosed
13 half-court and allowed to be in there, or you can go indoors and use
14 the exercise equipment.

15 Q. And why the time limit of at least an hour?

16 A. I mean, you know if you look at the plan of the day, I
17 just--I'm not sure when we came up with the 1-hour period of time,
18 but when you cram a full workday in for the prisoners, you know, in
19 the plan of the day, then you've got programming and treatment
20 programs, you know, where you have volunteers come in to meet with
21 folks with special treatment needs; that takes a chunk of time after
22 work call as well, and you've got to give prisoners time to shower,
23 you know, recreate, correspond possibly, get their uniforms ready for

1 tomorrow, and then you've got Taps that goes, you know, at 21 [sic].
2 There's only so much you can squeeze in, in a day, so I think, you
3 know, the 1 hour, it's been around for years, but I don't know how we
4 came up with it.

5 Q. And would there be, from your experience, if somebody's on
6 MAX but otherwise not a disciplinary problem or anything like that,
7 would there be a reason to take their rec call away from them and
8 only give them the sunshine call?

9 A. No, sir.

10 Q. Now if somebody was willing to have their rec--their 1-hour
11 rec taken away from them and given only 20 minutes of sunshine call,
12 what would be a reason for that?

13 A. I don't know, sir. You know, if there was some--some
14 behavior problems while he was out there and at that 20-minute mark
15 is when he started acting up and they brought him in, that could be
16 one. If someone was, you know, acting up prior to going out, you
17 know, it wouldn't make sense to take them out at all anyway; you just
18 cancel it before you take them out to avoid any incident, so I can't
19 think of any reason why it would be limited to a 20-minute sunshine
20 call.

21 Q. Now in your experience have you seen somebody who's not a
22 disciplinary problem have only 20 minutes of sunshine call for
23 basically a 6-month period of time?

1 A. No, sir.

2 Q. What problems do you see from a correctional standpoint
3 with only providing a detainee with 20 minutes of sunshine call for
4 that long of time?

5 A. I don't know. You probably start gaining some weight.
6 You're not exercising enough. Maybe some boredom, I would think;
7 lack of interaction there with, I mean, just getting out and smelling
8 the fresh air, I mean, are probably some of the things I would
9 consider.

10 Q. Now for the indoor rec call, that's, again, if you have the
11 1 hour, that's where you would go to that same rec room and--but now
12 you have an hour there without restraints.

13 A. Again, we--Quantico is unique in the fact that they had a
14 recreation room with a lot of the stationary bikes and that kind of
15 equipment and it was primarily because of the weather that has a big
16 effect on Quantico vice, you know, other places in the country, so
17 they had to have an alternate to outdoor recreation call, especially
18 during the winter.

19 Q. And when you went through the brig, did you actually try
20 the various machines within the indoor rec----

21 A. No, sir.

22 Q. ---- to see if they worked?

23 A. Uh-uh.

1 Q. All right, so that was (echo) (1). If you'd take a look at
2 (echo) (2), you'll see the imposed a special diet [pause]. Kind of
3 look through that and can you tell me how that might differ from PFC
4 Manning?

5 A. [Reviewed exhibit] Special diet, his calorie limitations,
6 for one. They're restricted on how many calories they eat per day
7 under this special diet.

8 Q. Do they have--does disciplinary segregation take their
9 meals in their cell?

10 A. They do.

11 Q. And from your understanding did PFC Manning take his meals
12 in his cell?

13 A. That's what I understand, yes, sir. I would expect he--
14 he's in maximum custody so he would be in his cell.

15 Q. If we look down at (echo) (3), "They shall be permitted to
16 receive mail; write letters; at the discretion of the CO to receive
17 personal visitors"; and then talks about corresponds with counsel.

18 How did that compare with PFC Manning from your knowledge?

19 A. I don't think that the CO had any discretion here for
20 Manning to receive personal visitors. I mean, official visits shall
21 be permitted; that's okay. [Reviewing exhibit] And I think--I think
22 other than the discretion there that it gives the CO there to receive
23 personal visitors, it's the same.

1 Q. Okay. And then we already covered Number 4, Manning, just
2 like disciplinary segregation, takes his meals in his cell.

3 A. Correct.

4 Q. And then Number 5, a 1-hour exercise period, we've kind of
5 talked about that. To your knowledge you didn't know PFC Manning
6 only received 20 minutes.

7 A. Correct.

8 Q. The period of 5- to 10-minute showers, is that also true of
9 MAX detainees?

10 A. I don't think they place a time limit on there, but I
11 probably also would understand if they don't let them sit there under
12 the water dripping on them for, you know, half an hour or so. I
13 would imagine that after 10 minutes they would be encouraging that
14 individual to get out of the shower.

15 Q. And then if you go down to (echo) (7), it talks about,
16 again, medical staff visiting daily. This would be similar in
17 regards to somebody on POI, correct?

18 A. Correct. This--because these individuals would be on a
19 special diet, the medical attention would be more so if there's a
20 deprivation in health or something caused by the diet, I think.

21 Q. Now we heard earlier testimony, and I just want to see if
22 you're aware of this, that Headquarters, Marine Corps ordered a new
23 policy with regards to Quantico, meaning that if somebody was in POI,

1 or even Suicide Risk maybe, that they could be in MDI as opposed to
2 MAX; are you aware of that?

3 A. I--yes, sir; yes, sir.

4 Q. Okay, enlighten me as to how that happened; who--what do
5 you know about that actually?

6 A. I think that what had transpired over the course of many
7 years is brig staffs were identifying a certain status and, you know,
8 correlated it with a certain custody classification automatically.

9 Q. So in this case POI being automatically meaning you're in
10 MAX?

11 A. Correct.

12 Q. Okay.

13 A. And one thing that I did was draft up this memorandum to
14 remind them that are--they are both separate and distinct
15 determinations that you make. You determine custody classification
16 and then you make an independent determination of what they're, you
17 know, what they're going to be segregated for; and although not
18 automatic, I mean, they've got to be looked at independently. Some
19 of them will probably always be maximum just because it would be
20 contradictory to do, you know, something less. So if you're saying
21 in one case that someone is--requires a heightened level of
22 supervision to prevent him from harming himself but you make him a

1 medium custody, that's--it doesn't work. It probably should be
2 maximum custody for that reason.

3 Q. Well what was your intent, then, of this--did you draft
4 this; am I----

5 A. Yes, sir.

6 Q. ---- understanding you correctly? Okay, so what was your
7 intent in what you drafted?

8 A. Oh, just--just to remind folks that, again, they take a
9 look at custody independently and then they take a look at the
10 reasons for segregation independently as well.

11 Q. So under what you drafted, is it possible to be POI and
12 MDI?

13 A. [Pause] No, sir. No. I don't think so. And, again, it's
14 because of the heightened level of supervision that you're providing
15 somebody and that is, you know, again the definition of custody
16 classification is the level of supervision that an individual
17 requires, so I don't think that you would ever see medium custody POI
18 or medium custody Suicide Risk.

19 Q. Well we had some testimony where some of the guards at
20 Quantico believed that that's exactly what that policy meant, that
21 just because you were in POI or even SR, Suicide Risk,----

22 A. Uh-huh.

1 Q. ---- for example, that you could also be MDI; and they
2 actually testified that that's what they did. They put someone in
3 POI and MDI.

4 A. Right.

5 Q. That wasn't the intent of your message?

6 A. It wasn't the--I mean, by the way it was written, again, it
7 stated you look at these two individually and independent of each
8 other, and don't just say MAX POI. You determine that he's max
9 custody, he requires an elevated level of supervision,----

10 Q. Uh-huh.

11 A. ---- then you take a look at what status is he going to be
12 in. Is he Suicide Risk? Is he POI? Is he an escape risk? And then
13 you add that to the maximum custody. So, again, in theory could it
14 happen, yes; is it likely to have happened, no.

15 Q. And there was some testimony that this directive was only
16 to Quantico and not to all Marine brigs; is that true?

17 A. No, sir.

18 Q. So it went to everybody?

19 A. It went to all six of the Marine Corps confinement
20 facilities. The only statement that was in there about Quantico--
21 that was unique to Quantico was that general population could be
22 housed in the individual cells because of the way they were designed.
23 Every other facility had open bays and individual cells.

1 Q. So I got--and if I'm understanding you right, then, the
2 reason why this was drafted was just to remind the correctional
3 people at the various briggs that they needed to look at both the
4 classification and the custody as separate determinations?

5 A. Look at them independently. I mean you're going to
6 probably look at them in the same session, obviously, the--but you
7 look at them independently of each other. You don't--don't identify
8 one with one auto--with this one here automatically.

9 Q. And other than that, then there was on directive that just
10 because you've got somebody in a particular classification that that
11 means a particular custody----

12 A. Right.

13 Q. ---- or vice versa; a----

14 A. Right.

15 Q. ---- particular custody means a particular classification.

16 A. Yes, sir.

17 CDC[MR. COOMBS]: Okay.

18 [Pause] Chief Galaviz, I'm going to retrieve the enclosures
19 from you and make sure I've got everything. So I'm retrieving from
20 you Appellate Exhibit 439G and the copy--copies of Enclosure 47 of
21 Appellate Exhibit 259.

22 Chief, that's all the questions I have for you.

23 WIT: Thank you.

1 CDC[MR. COOMBS]: The government may have redirect.

2 MJ: Redirect?

3 ATC[CPT VON ELTEN]: Yes, Your Honor.

4 Chief Galaviz, do you need a comfort break?

5 WIT: I'm okay, sir.

6 **REDIRECT EXAMINATION**

7 **Questions by the assistant trial counsel [CPT von Elten]:**

8 Q. Let's talk a little bit about recreation call.

9 A. Yes, sir.

10 ATC[CPT VON ELTEN]: Ma'am, I'd refer you to Bates number 408.

11 MJ: Okay, don't talk to me about Bates numbers. What are you--
12 where--what--in what?

13 ATC[CPT VON ELTEN]: Section 6314, on page 6-15, in Secretary of
14 Navy instructions.

15 MJ: Okay. Page 6-15?

16 ATC[CPT VON ELTEN]: Yes, ma'am.

17 Q. What are some of the components of recreation call?

18 A. Some of the components include library; television call;
19 recreation, going out--out into the recreation field, participate in
20 athletics.

21 Q. Would that include being outside in the sunshine?

22 A. It could if they chose not to do anything, but, yes, sir.

23 Q. Okay.

1 A. It could.

2 Q. That would include gym time?

3 A. "Gym time," yes, sir.

4 Q. Would that include seeing movies?

5 A. Yes, sir.

6 Q. Would that include a television?

7 A. Yes, sir.

8 MJ: I'm sorry to interrupt you. You're saying page 615----

9 ATC[CPT VON ELTEN]: Yes, ma'am.

10 MJ: ---- of the SECNAV Instruction?

11 ATC[CPT VON ELTEN]: Yes, ma'am.

12 MJ: Why does mine end at 388?

13 ATC[CPT VON ELTEN]: Sorry, it was 6-15.

14 MJ: Oh, okay. [Pause] Okay, got it.

15 Q. Is recreation call--can recreation call be completed

16 individually?

17 A. It can.

18 Q. Can it be completed in a group?

19 A. It can.

20 Q. So if a date--if a detainee has sunshine time, television

21 privileges, library privileges, correspondence privileges four hours

22 a day, would that detainee have over an hour of recreation call a

23 day?

1 A. I believe that the--it would amount to at least an hour.

2 Q. Let's talk a little more about escape risk. What are some
3 of the characteristics that go into determining escape risk?

4 A. We talked about the potential length of sentence that
5 someone could be looking at; low tolerance, I think, to stress,
6 frustration, I think; a belief that, you know, what he's being--an
7 individual's being charged with, you know, is unjust, unfair would be
8 some of the--some of the things that we would consider as an escape
9 risk.

10 Q. What about the charge sheet?

11 A. Charge sheet, again, you know, the charges, the seriousness
12 of the charges.

13 Q. And what about--let's talk a little bit about those in
14 detail individually. Why is the charge sheet a factor for
15 determining escape risk?

16 A. Well, you--you've got maximum authorized punishment that,
17 you know, is assigned to each one, so, you know, one of the things
18 that the brig staff looks at is the charges that he's being brought
19 under and what the maximum allowed punishment would be should that
20 individual be convicted of that charge.

21 Q. Why is the maximum potential charge a factor for
22 determining escape risk?

1 A. Well it coincides with length of sentence. You know, if
2 somebody receives a--or could potentially receive a lengthy sentence,
3 they may not want to stick around and take a chance and try and
4 escape.

5 Q. So it increases their chances that they will escape if
6 they--if they're going to be there longer.

7 A. It could, yes, sir.

8 Q. Why are the severity--why is the severity of the charges a
9 factor also?

10 A. Well I think the severity of the charges is a direct
11 relationship with, you know, the length of sentence that you could
12 potentially receive. They could be--if it's charges that deal with
13 violations, you know, could compromise national security, there's
14 probably an increase of concern for his--a person's ability; or if
15 that individual escaped, what damage that could possibly cause, so it
16 would elevate our concern.

17 Q. Why would it elevate your concern?

18 A. Because, again, if that person elected to escape and was
19 successful, it could cause, you know, damage to national security.

20 Q. Why is the detainee's belief that he's unjustly being
21 treated a factor?

22 A. Because if an individual feels he's being charged for
23 things that he didn't do and he's running up against a brick wall and

1 there's no light at the end of the tunnel and it's pointless to
2 continue to argue and fight and debate that he may feel that he has
3 nothing, you know--it's not worth sticking around for if no one's
4 listening.

5 Q. And why is tolerance of frustration a factor?

6 A. Well I think tolerance and frustration, you've got a
7 controlled environment in a confinement facility, and somebody who
8 is--finds it difficult to adjust with the, you know, the structure at
9 that facility, having to deal with other individuals if you're not,
10 you know, someone who's very social and so forth, you can get
11 frustrated and, again, elect to try and leave.

12 Q. How unpredictable are detainees?

13 A. It's--they're very difficult, sir. We try--you know,
14 counseling sessions do a certain amount to give you information, but
15 you still never know what's going through their--through their minds,
16 for the most part.

17 Q. Let's talk a little bit about interpretation of regulations
18 and timing of removal from Suicide Risk. What does--what do the
19 Secretary of Navy instructions say about the timing that somebody
20 must be removed from Suicide Risk after his psychiatric
21 recommendation?

22 A. It does not specify, sir.

1 Q. Do you believe there's room for interpretation in the
2 timing?

3 A. Yes, sir.

4 Q. Prior to your report about PFC Manning's confinement to
5 Colonel Choike, did you ever opine about the timing required under
6 the Secretary of Navy instructions?

7 A. No, sir.

8 Q. So you opined after PFC Manning's--after the report that
9 Colonel Choike gave about PFC Manning's confinement.

10 A. Right.

11 Q. Let's talk now about documentation of classification and
12 assignment boards.

13 A. Right.

14 Q. What form is required?

15 A. I believe it's the 2711-1, if I'm not mistaken.

16 [Pause]

17 MJ: Bailiff?

18 BAILIFF: [No response.]

19 MJ: Bailiff?

20 [The military judge conferred with the bailiff.]

21 [The assistant trial counsel handed a document to the court reporter.
22 The court reporter marked the document as AE 439H and handed it to
23 the assistant trial counsel.]

1 ATC[CPT VON ELTEN]: I'm handing the witness Appellate Exhibit
2 439H.

3 Q. What is this form entitled?

4 A. "Custody Reclassification."

5 Q. And what is the form number?

6 A. It's a DD Form 2711-1.

7 Q. Does this form have a place to document where a member of a
8 classification and assignment board votes?

9 A. As I look through it here, it appears that in--well, no, it
10 doesn't--doesn't exactly have one. It has the recommended decision
11 in Block 8.

12 ATC[CPT VON ELTEN]: I'm handing the witness Enclosure 32 to
13 Appellate Exhibit 259, looking at page 4 of 26.

14 Q. Chief Warrant Officer Galaviz, what form do you have before
15 you now?

16 A. It's the brig Form 4200.1.

17 Q. Does that form have a place to document where a member of
18 the classification and assignment board votes?

19 A. Yes, sir.

20 Q. Looking at the 2711, Appellate Exhibit 439H, isn't this
21 form for reclassification?

22 A. It is.

1 Q. And isn't the brig Form 4200, in Enclosure 32 to Appellate
2 Exhibit 259, a better form for documenting classification assignment?

3 A. [Pause] I've never seen this form, sir. Again, it's a
4 locally produced document, so I--you know, this--this is the form
5 that I know, to be quite honest with you. I don't know the pros and
6 cons to it.

7 Q. But the Secretary of Navy instructions don't explicitly
8 require 2711 to document C&A boards.

9 A. I believe they encourage the use of the 2700 series of
10 documents, the DD Forms.

11 Q. But for a classification and assignment board, it does not
12 say to use the 2711.

13 A. For custody, right, reclassification, you would; yes, sir.

14 ATC[CPT VON ELTEN]: I'm retrieving 439H.

15 MJ: Let me just interrupt you for just a second to see if I'm
16 understanding this correctly.

17 If a board meets and they use the local classification form
18 and the decision is made to reclassify, is that when they would use
19 this form or do they use it for the board itself?

20 WIT: There is a----

21 MJ: This form meaning DD Form 2711-1.

1 WIT: Yes, ma'am. There is--there is a form in the 2700 series
2 that we use in our confinement facilities that is titled, I believe,
3 the "Classification and Assignments Board Recommendation" as well.

4 MJ: And it's not----

5 WIT: And that would--that would be used----

6 MJ: ---- 2711-1.

7 WIT: No, ma'am. I think--believe that would be used for the
8 initial custody classification when an individual first comes in.
9 This form here would be used later on in an individual's confinement.

10 MJ: Okay, I'm sorry to interrupt.

11 Please proceed.

12 ATC[CPT VON ELTEN]: Thank you, ma'am.

13 Retrieving 439H.

14 **REDIRECT EXAMINATION CONTINUED**

15 **Questions by the assistant trial counsel [CPT von Elten]:**

16 Q. C&A boards can be documented in CORMIS.

17 A. Correct.

18 Q. And brigs do document classification and assignment boards
19 in CORMIS.

20 A. Right.

21 Q. Let's go back to escape risks.

22 How can you gauge a detainee's tolerance of frustration if
23 the communication is poor?

1 A. It makes it extremely difficult.
2 Q. How can you gauge if a detainee thinks his charges are
3 unjust if the communication is poor?

4 A. Very difficult.

5 Q. If you don't have that communication to form a basis,
6 what's the default position?

7 A. The default position is to err on the side of caution.
8 ATC[CPT VON ELTEN]: Thank you.

9 MJ: Redirect?

10 CDC[MR. COOMBS]: Yes, ma'am, cross.

11 MJ: Okay.

12 **RECROSS-EXAMINATION**

13 **Questions by the civilian defense counsel [MR. Coombs]:**

14 Q. I'm handing you again Enclosure 47 to Appellate Exhibit
15 259. If you could, turn to page 31. It should be one of them that
16 are green tabbed.

17 A. [Did as directed.]

18 Q. Can you read the underlined portion for me within, I guess
19 that is, 1202, Section 2.

20 MJ: I'm sorry. Where are you looking?

21 CDC[MR. COOMBS]: I'm looking, ma'am, on page 31 of 388.

22 MJ: Thank you.

23 CDC[MR. COOMBS]: And Number 2 on that page.

1 A. Unauthorized exercises, unnecessary restrictions or
2 deprivations, and demeaning treatment serve no useful purpose and are
3 prohibited. The friction they cause creates tension between staff
4 and prisoners and leads to acts of aggression, retaliation, and
5 serious individual or mass disturbances.

6 Q. Now in this instance here am I correct that if you subject
7 a detainee to unnecessary restrictions that that's going to cause a
8 problem in the detainee/staff relationship?

9 A. It could.

10 Q. And could you see how somebody if they were subjected to
11 unnecessary restrictions for prolonged periods of time, how that may
12 lead to anxiety attacks, for example?

13 A. I'm sure that's possible; yes, sir.

14 Q. Now if you would turn to page 96 of 388.

15 A. [Did as directed.]

16 Q. If you would go ahead and just read the purpose of custody
17 classifications for us.

18 MJ: Page 96?

19 CDC[MR. COOMBS]: Yes, ma'am. It is Section 4201, Number 1.

20 A. Okay, so you want me to read down to?

21 Q. Just the purpose.

22 A. Okay. [Reading] Purpose of custody classification is to
23 establish the degree of supervision needed for control of an

1 individual--of individual prisoners. Custody classification provides
2 guidance for supervision of prisoners and permits--and permit
3 establishment of security measures consistent with requirements of
4 the individual. Among prisoners there are wide variations of
5 personality and mentality. Where there is fair and impartial
6 treatment, prisoners generally present no serious disciplinary
7 problems. There are some prisoners, however,----

8 Q. You can actually stop there. So with fair and impartial
9 treatment, they generally don't present disciplinary problems; is
10 that your experience?

11 A. Yes, sir.

12 Q. And why would that be, in general?

13 A. I think because the atmosphere is conducive. They see
14 that, you know, punishment is not handed down without justification.
15 I think that the individuals feel that they're safe and that
16 disciplinary problems are dealt with accordingly and I think
17 everybody feels comfortable in that environment.

18 Q. If you would now, Chief Galaviz, turn to page 100.

19 A. [Did as directed.]

20 Q. And if you would just read Number 3 on that page.

21 A. [Reading] Ultra-conservative custody classification results
22 in a waste of prisoner and staff manpower. A large number of MAX and
23 MDI prisoners reduce the number of staff available for supervision of

1 the kinds of productive work available to lesser custody
2 classifications (IC, Minimum, MDO). Classification system must be
3 followed [sic] established, but flexible, procedures.

4 Q. All right, so the idea of ultra-conservative custody
5 classifications, am I correct that if you're ultra-conservative then
6 that would lead to a needless waste of manpower?

7 A. It has a tendency of increasing your manpower workload,
8 yes, sir.

9 Q. And in this instance, if you had known that PFC Manning was
10 basically only given 20 minutes of sunshine call from his
11 indoctrination to basic--to December 10th, would that change any of
12 your findings regarding MAX or POI?

13 A. No, sir.

14 Q. And why not?

15 A. I mean, I don't think the, you know, amount of recreation
16 call that he was given or, you know, sunshine call is in direct
17 correlation with custody classification.

18 Q. Would the getting only the 20 minutes of sunshine call be
19 ultra-conservative in any way?

20 A. I think it would only be ultra-conservative if you're
21 making those decisions without the justification. I mean, I think if
22 you're going to err--you're going to err on the side of safety; and

1 if it increases your manpower, then it does, but I think you're going
2 to, you know, you're going to err on the side of caution.

3 Q. Can you turn to now, finally, page 106?

4 A. [Did as directed.]

5 Q. This is a provision that speaks to the requirement to
6 remove a detainee from Suicide Risk if a mental health professional
7 says it's not warranted.

8 A. Right.

9 Q. And the trial counsel asked you some questions on whether
10 or not there's a time limit to shower.

11 A. Right.

12 Q. And also asked you if that was open to interpretation. I
13 just want to make sure I understand your perspective from--as the
14 proponent. Is this open to any sort of determination with regards to
15 removing a person within minutes or at most hours of the mental
16 health professional's decision?

17 A. Well it's--you know, I feel because I had to explain it,
18 you know, and provide some amplifying guidance that it was
19 misinterpreted. I will tell you that, you know, again, the spirit
20 and intent is to remove that individual, you know, almost
21 immediately.

22 Q. And why would that be the case?

1 A. Well I think because it's been recommended and--by the--by
2 the medical professional to do it, and again, you place some
3 unnecessary restrictions on individuals if you don't for an extended
4 period of time.

5 CDC[MR. COOMBS]: All right, thank you.

6 WIT: Uh-huh.

7 MJ: Any final redirect?

8 ATC[CPT VON ELTEN]: Yes, ma'am. Just in the interest of time,
9 I would refer you to paragraph 1, Section 4201, on pages 4-6 through
10 4-7, particularly reading, "There are some prisoners, however, who
11 are deliberately uncooperative. Some have personality----

12 MJ: I got it.

13 **EXAMINATION BY THE COURT-MARTIAL**

14 **Questions by the military judge:**

15 Q. I have a few questions for you, Chief Galaviz.

16 A. Yes, ma'am.

17 Q. It's going to take me just a minute to get them organized.

18 [Pause] I'm looking at the SECNAV Instruction on maximum custody, and
19 let me find that again [pause].

20 ATC[CPT VON ELTEN]: Ma'am, that should be page 97 of 388.

21 MJ: Thank you.

22 Q. I guess where--I'm looking at what you said after--you said
23 earlier about your clarification on custody and status being

1 independent determinations. [Pause] Were you aware that Quantico

2 Brig had a policy for the brig itself dated 1 July 2010?

3 A. The brigs are required to have standard operating
4 procedures, yes, ma'am.

5 Q. Do they have to be approved by your office?

6 A. No, ma'am.

7 Q. They have a provision in that policy that says Prevention
8 of Injury. Those prisoners who have been given an indication that
9 they intend or are contemplating harming themselves or others will be
10 assigned maximum custody. Is that--is that consistent with the
11 SECNAV Instruction and your guidance?

12 A. No, ma'am. No; I think again, as I explained to defense,
13 you know, in most cases it probably will max--be maximum custody but
14 the intent of that policy memorandum that went out was to ensure that
15 they look at them independently.

16 Q. Because somebody on POI, that's a piece of administrative
17 segregation; is that right?

18 A. Yes, ma'am.

19 Q. So someone on, say, protective custody would be under that
20 segregation too?

21 A. Protective custody would be a separate--it wouldn't be
22 administrative custody--or segregation, I mean. It would just be
23 under protective custody.

1 Q. Okay. Part of maximum custody is that a person has to be
2 restrained, and in Quantico at least the facility has to be locked
3 down when they are moved.

4 A. Yes, ma'am.

5 Q. Is it possible to have--and this is sort of where we were
6 looking at that you would say it would be rare to have someone on
7 maximum--or on POI but not be on maximum custody.

8 A. Right; yes, ma'am.

9 Q. Are there situations where a person may be at risk of
10 harming themselves but there's no reason to restrain them when they
11 leave their cell any more than you would somebody in MDI?

12 A. I think if you had them in elevated supervised level, such
13 as POI, you know, again, the restraints are only going to serve as
14 supplements to you keeping them from trying to hurt themselves.

15 Q. So you--so in your opinion, then, the restraints required
16 by maximum custody would be necessary to--for someone in POI status.

17 A. Right. And I'll give you an example, ma'am. You know we
18 had an example that came out where escorts were escorting somebody
19 and he was under a preventive--Prevention of Injury and as they were
20 escorting him, he ran out--tried to run out in front of a car. I
21 mean, so again, restraints, they help us keep people from hurting
22 themselves.

1 Q. Okay. And I'm still confused, and I apologize for this,
2 this whole sunshine call/rec call.

3 A. Yes, ma'am.

4 Q. As I read the SECNAV Instruction, at least for disciplinary
5 segregation, it says that each person in disciplinary segregation
6 gets 1 hour of exercise unless their behavior warrants something
7 different.

8 A. And that's a recent change, I think, the exercise call,
9 which is really they go out and just are able to be by themselves and
10 conduct calisthenics or jog around in a certain area and so forth.

11 Q. Is there a similar provision for people in administrative
12 segregation?

13 A. They're allowed an hour of recreation call, which means
14 they can partake in, you know, if there's basketball that you want to
15 play, you can play in--you can play basketball. The difference is
16 somebody in disciplinary segregation would not be given any tools to
17 recreate with. They will be outside for an hour. They can do
18 pushups, side straddle hops, things of that nature, but when somebody
19 goes out on recreation call, they are given those additional tools to
20 recreate with, whether it be a ball or whatever.

21 Q. So when someone in the--does the SECNAV Instruction say
22 anything about general population getting--again, I'm getting
23 confused about ----

1 A. Sure.

2 Q. ---- this recreation. If you have an hour of television

3 call, does that mean you get no exercise?

4 A. No, ma'am. No. I think it's in conjunction. It--you

5 know----

6 Q. Well how much exercise, ----

7 A. TV----

8 Q. ---- if anything, is required?

9 A. TV is, you know, in addition. You know, it's part of the

10 recreation program as a whole, ----

11 Q. I understand that.

12 A. ---- you know.

13 Q. I'm looking at physical exertion, ----

14 A. Going out----

15 Q. ---- indoor or outdoor.

16 A. Right. Going outside, it's, you know, 1 hour of recreation

17 time, and that's just----

18 Q. Not including the TV and the correspondence ----

19 A. Right; yes, ma'am.

20 Q. ---- and the rest of it. It's ----

21 A. Right.

22 Q. ---- exclusively indoor or outdoor recreation.

23 A. Right.

1 Q. And the standard is how much?

2 A. An hour.

3 Q. So if there was a brig policy that--for maximum custody
4 detainees it's 20 minutes for all of them, is that consistent with
5 that?

6 A. No, it's not. No, it's not. I mean just in general, as
7 far as ----

8 Q. Uh-huh.

9 A. ---- max custody detainee, I mean, it would probably have
10 to be just that they were in a disciplinary status or something that
11 was restricted.

12 Q. What is the policy, or is there one, of rec--or exercise
13 call, I'll call it, for people on Suicide Risk and/or POI?

14 A. Well they're allowed recreation call.

15 Q. Meaning?

16 A. That they can go out and be given a basketball and they
17 can, you know, kick a soccer ball if they're ----

18 Q. How long are they supposed to be allowed to do that?

19 A. An hour.

20 Q. Okay.

21 A. And if they're given exercise call, you know, they wouldn't
22 be given any of those--that pieces--those pieces of equipment, but
23 the regulations do state recreation call for 1 hour unless there's

1 other reasons why you have to, you know, maybe the behavior, the
2 weather, whatever, you can terminate early.

3 Q. That would be individually tailored.

4 A. Yes.

5 Q. If someone, for example, was out all day at an appointment
6 and came back at Taps ----

7 A. Yes, ma'am.

8 Q. ---- that particular day maybe they wouldn't get an hour?

9 A. Right; yes, ma'am. And, again, depending on how many
10 maximum custody you have and, you know, you may have to cut the
11 amount of time down because there's only one place for them to
12 recreate at; you may have to cut them short in order to give them all
13 the most amount of time possible within the plan of the day.

14 Q. Tell me a little bit about the trans--or are you familiar
15 with the transformation of Quantico Brig from whatever it was before
16 the ----

17 A. Yes, ma'am.

18 Q. ---- summer of 2010 to whatever it became afterwards; can
19 you tell me about that?

20 A. The BRAC 2005 had directed that the Quantico Brig transfer
21 its correctional functions down to Chesapeake, Virginia, at a new
22 facility that the Navy was being--was built and what--almost
23 immediately the commanders at Quantico said, "Whoa, you know. You

1 know what this is going to do to us down here and now we have to
2 drive about 3 1/2 hours one way to put somebody in pretrial
3 confinement," and so our office along with the SJA's office of the
4 Marine--of Headquarters, Marine Corps worked with the Office of
5 General Counsel and the BRAC lawyers to define what transferring the
6 correctional function meant in the BRAC order. And bottom line what
7 ended up happening, ma'am, is they said, "We meant transfer your
8 post-trial confinement mission," and I said, "Well great. Let's
9 retain a pretrial confinement mission, especially for these
10 commanders here." So it was shortly after that we complied with the
11 BRAC mandate, I believe it was September of '11, that we fulfilled
12 that and we transformed from a Level I confinement facility to a
13 pretrial confinement facility.

14 Q. What--Quantico transformed from ----

15 A. A Department of Defense Level I con ----

16 Q. Which is?

17 A. We would hold prisoners up to post-trial confinement for up
18 to 1 year.

19 Q. And when it was a Level I confinement facility, what was--
20 can you approximate the number of prisoners that you averaged?

21 A. Average daily population was hovering around the 40 mark,
22 ma'am.

23 Q. What about after the transform ----

1 A. After the transformation, obviously, you know, we lost all
2 the post-trial folks, you know. Once they were adjudged, we
3 immediately transferred them out, so the population, you know,
4 started going down almost immediately; and we got to a point where,
5 you know, we were hovering a daily average of about five or six for a
6 sustained period of time.

7 Q. You mean five or six pretrial detainees in Quantico for a -
8 ---

9 A. In the Quantico Brig.

10 Q. The same people in there for a sustained period of time or
11 a turnover to maintain five or six?

12 A. The average daily population was five to six. You know,
13 again, as they were adjudged, we transferred them out, so the average
14 daily count hovered around five to six.

15 Q. Do you have any knowledge of how long the average detainee
16 was at Quantico?

17 A. You know, ma'am, I know we did some research on that when
18 we were making recommendations. I don't recall, but I think from the
19 date they were placed in pretrial to the time they were adjudged we
20 were probably looking at 30 to 45 days maximum, the average time they
21 were staying there.

22 Q. When Quantico became a pretrial confinement facility, was
23 it resourced to hold pretrial--long-term pretrial detainees as well?

1 A. You know, really when we take a look at pretrial, it is,
2 you know, for the--as long as they're pretrial, you should be capable
3 of holding them there, so some would argue that, you know, long-term
4 pretrial confinement requires additional resources, but, you know,
5 they held on to what they had prior to them going to a pretrial.
6 There was no additional resources, you know, put into that facility.
7 As a matter of fact, I think they lost some, you know. The work
8 program went away because, you know, we didn't have enough folks to
9 run the equipment and maintain the landscape with only five detainees
10 and they couldn't be medium outside custody because they couldn't.
11 We were restricted from that. We didn't have any workers so.

12 Q. You testified that some would think that additional
13 resources or more resources are needed for a con--for a facility that
14 houses long-term pretrial detainees with respect to one that doesn't.

15 A. Right.

16 Q. In your expertise with--26 years in corrections?

17 A. Yes, ma'am.

18 Q. What's your view on that?

19 A. I would agree that to a certain extent you--if you hold
20 somebody in for pretrial confinement for an extended period of time
21 that maybe you should bring in some, you know, programs, you know,
22 life skills, things of that nature from the--maybe the Family
23 Advocacy offices and that kind of stuff to come in and give folks

1 classes on certain things that an average guy that's, you know,
2 confined for 30 to 45 days wouldn't necessarily need. You know,
3 parenting skills; you know, how to write a checkbook--or maintain a
4 checkbook, things of that nature, so it's more program related, I
5 think, and then also work. I think that you would have to come up
6 with a work program that would allow you to work those pretrial folks
7 inside the facility.

8 Q. What about mental health?

9 A. Mental health, you know, I think Quantico, you know, is,
10 obviously, I think you're aware, a very small installation, very
11 limited resources, so I--you know, when I was a commander there, they
12 were able to support us, you know, and I think that within the
13 National Capital Region there's enough resources around that if
14 somebody needed that type of assistance that they could get it around
15 this area.

16 Q. When were you the commander there?

17 A. It was--I believe it was 2004, ma'am.

18 Q. Was there any attempt during PFC Manning's pretrial
19 confinement at Quantico to--by the facility to work through, I guess,
20 higher levels to get additional mental health resources?

21 A. Yes, ma'am, and I believe that--you know, I kind of was
22 serving as the liaison between the base and Army Corrections Command
23 to try and facilitate that. I think the base commander and his

1 clinic commander felt that maybe, you know, they could get resources
2 from outside the Quantico area to support the needs that they felt,
3 you know, PFC Manning needed. I kind of left it, you know, I turned
4 over the concerns of the base commander to the Army Corrections
5 Command and said, "Listen. These are concerns that the individual
6 base commander who's providing you with this support is asking for
7 you to consider getting for him."

8 Q. Suicide Risk is considered in the SECNAV Instruction a
9 psychiatric diagnosis, I guess, ----

10 A. Yes, ma'am.

11 Q. ---- and that's where the psychiatrist has to be involved.
12 Does PO--would--under the SECNAV Instruction would brig personnel
13 have to consider mental health recommendations at all for POI?

14 A. No, ma'am.

15 Q. Under the SECNAV Instruction, is POI considered a
16 psychiatric issue or is it something different?

17 A. POI is considered a staff obligation that they have to
18 those that are confined there.

19 Q. Under the SECNAV Instruction, does the brig--does the brig
20 staff have--or the brig officer have authority to take away someone's
21 clothes in a--or someone's underwear in a POI status?

22 A. Well, what the SECNAV does do is authorize the brig
23 commander to remove clothing for their safety. It doesn't specify,

1 you know, the POI because, again, that's a responsibility that the
2 brig staff has.

3 Q. If the SECNAV Instruction allows brig staff to remove a
4 prisoner's clothing for their safety, then why did you--why did your
5 office send that e-mail to Quantico after Chief Barnes reviewed the--
6 removed the underwear; the one saying if you're taking Suicide Risk
7 like things ----

8 A. Right. Well I think because there was a question that he
9 wasn't placed in Suicide Risk after that happened.

10 Q. Does he have to be?

11 A. Well I think the steps are when you take that action on
12 somebody to remove his clothing, you have, at that point, as far as
13 I'm concerned, gone into the Suicide Risk status. I mean, what more
14 can the individual hurt himself with at that time.

15 Q. When you went down to do your review in February, you
16 testified earlier you didn't look at anything put out by mental
17 health; was that not in his file?

18 A. No. Those are separate, you know, documents. They're
19 treated kind of like medical--medical documents, so I kind of--and
20 because I was focusing in on the four specific questions that the
21 base commander had asked me to look into, I stayed away from that.

22 Q. Are C&A boards required to be documented in CORMIS?

1 A. CORMIS is kind of a recep--I mean, it's a database that we
2 use and we upload documents into CORMIS, so the ----

3 Q. But would a C&A board sit there on CORMIS as they're
4 deliberating and input things?

5 A. No; it would actually--the documentation would be uploaded
6 and contained into CORMIS.

7 Q. So you wouldn't just--you wouldn't be having the board and
8 then be typing the data into CORMIS?

9 A. It probably could be done at larger facilities, I think,
10 that had those, you know, enter the access [sic], but what usually
11 happens is they hold the board and then they upload the documents
12 into CORMIS in most cases.

13 Q. If you don't use forms for the board, what do you upload to
14 CORMIS?

15 A. Well that's just it; you need to use forms.

16 Q. Are they required by the SECNAV Instruction?

17 A. Yes, ma'am.

18 Q. And that would be what--that would be the form that--what
19 form are you talking about? Remember, we talked about the
20 reclassification form; that that comes at the end. What form ----

21 A. Yes, ma'am.

22 Q. ---- is required for the C&A board?

1 A. There's also the initial custody and classification form
2 that's used.

3 Q. That's when they come in.

4 A. Right; yes, ma'am.

5 Q. What about in between ----

6 A. And then they have--there's ----

7 Q. ---- when their custody doesn't change?

8 A. ---- a C&A board, you know, recommendation.

9 Q. And that's a form itself, too?

10 A. Yes, ma'am. So it's ----

11 Q. Is that in the SECNAV Instruction?

12 A. I don't know if it's in the index in the back of the SECNAV
13 Instruction. I can't recall if they have all the forms listed.

14 Q. Is it a DoD form?

15 A. Yes, ma'am. And it's in the 2700 series because that's
16 what we use in the corrections community.

17 Q. When someone is--is it consistent with policy if you have a
18 lengthy potential sentence, a really lengthy potential sentence for
19 your crime, is that factor alone enough to justify maximum custody?

20 A. In most cases, it usually is, ma'am. Now over the course
21 of observation and, you know, weeks lead into months and months lead
22 into something else, if a continual good behavior and adherence to

1 the rules and regulations, maybe even the charges are lessened, then,
2 you know, those are all factors that the brig considers, too.

3 Q. So if I understand your testimony, are you saying that
4 potential length of sentence could be enough to put somebody
5 initially into maximum custody, but over time there would have to be
6 other factors that would be added to that?

7 A. Well, it wouldn't have to be added. I think that you could
8 justify--continue to justify--as long as the charges never changed
9 and the potential length of sentence always existed, it wouldn't have
10 to change, but what could influence that is over a period of time the
11 individual's adaptation to confined--the confined environment, his
12 behavior, you know, good, positive behavior, interaction with his
13 counselor would certainly help and, you know, aid in making a just--
14 in justifying a lower custody classification. It's through that
15 period of observation that the brig staff gets a better idea of this
16 individual.

17 Q. I'm going to go back very quickly to the mental health
18 issue. What is the bare minimum mental health requirements for a
19 confinement facility with pretrial detainees?

20 A. You know, I think we don't have that in the Secretary of
21 Navy instruction. I think what it has is that if you have somebody
22 who a medical officer recommends needs to see somebody with those

1 credentials that they serve as a liaison for you to try and track one
2 down in that area.

3 Q. Now you--did I understand your testimony earlier that a
4 medical officer is--includes a corpsman?

5 A. Well we said "medical department" would have to go through
6 Special Quarters to see everybody, so in that particular case when
7 they say "medical department," a representative from, would include a
8 corpsman.

9 Q. So how often--what's the minimum requirement for medical
10 support as opposed to mental health support?

11 A. Well medical officer, it could be daily, depending on if he
12 has folks that he needs to see every day on a daily basis. You know,
13 we don't normally, in--at least in our pretrial confinement
14 facilities, don't have a doctor as part of the staff. He--it is a
15 collateral duty for him, and he works somewhere else on the
16 installation.

17 Q. Is there any minimum requirement in the SECNAV Instruction
18 for how frequently a doctor has to appear; could it be once every 6
19 months, once every 2 years?

20 A. Well it would be as needed. If the corpsman recommends
21 that he sees somebody for sick call or for an injury so he can get a
22 referral, then certainly that medical officer will be aboard more
23 frequently; but in most cases, the Sailors who support us medically

1 have independent duty corpsmen who can actually make prescriptions
2 and so forth and diagnosis, so that kind of helps us as well.

3 Q. So corpsmen can--you mean, they can actually issue
4 prescriptions?

5 A. Right; well, independent duty corpsmen. They're select--
6 select individuals with [pause]----

7 Q. They would have to be trained or licensed, at least, at the
8 nurse practitioner level or something of that nature?

9 A. I'm not sure what the criteria is, ma'am, or the
10 credentials are, but I do know that as independent duty corpsmen they
11 can make prescriptions.

12 Q. And take me one more time through the discussion of the C&A
13 boards. Who is typically on them?

14 A. It varies, based on the size of the facility. Obviously,
15 when you have a staff at a larger facility of 200-plus, you can kind
16 of get a very diverse group of folks there. What you like to do is
17 have traditionally a representative from the administrative side of
18 the facility; somebody from the operations or the security side; and
19 then you like to have somebody else who's just kind of independent
20 and doesn't have really any interactions with the individual in
21 question, that's usually what consists of the board members. And
22 then what you have is the counselor, the individual's counselor, who
23 presents his recommendation to the board.

1 Q. I believe you testified earlier that the counselor should
2 not be on the board; is that what you testified to?

3 A. He should not be a member of the board, no, ma'am. He----

4 Q. How about a small facility?

5 A. Well, I mean, you know, again, you're putting a lot of
6 trust and confidence on the professionalism of the staff, which I
7 don't debate, but what it does do is it causes, you know, it can be
8 suspicious, I think. You know, people will say, "Well what kind of
9 influence did he have?" I mean, "Well we know what his vote is going
10 to be," because he's making the recommendation, so--so it's preferred
11 not to, but I do know and probably in staff shortages it probably
12 happens more often than I care to think, but it probably does happen.

13 Q. Is there any prohibition in the SECNAV Instruction from the
14 counselor serving on the C&A board?

15 A. Not that I recall.

16 Q. The person that you talked about that was on POI for a year
17 for cutting himself,----

18 A. Yes, ma'am.

19 Q. ---- did he cut himself once and then was that a constant
20 justification for keeping him on POI or did he continually cut
21 himself?

22 A. I think it varied. I think as soon as he got a staff
23 member's attention he would stop. So, I mean, sometimes it took two

1 or three cuts; sometimes it was the first one; or sometimes he was
2 caught in the act of getting ready to do it.

3 Q. But, I mean, he--did he cut repeatedly over the course of
4 time or---

5 A. Oh, yes, ma'am.

6 Q. ---- did he cut once and then----

7 A. No.

8 Q. ---- the board said, "I'm going to--I'm going to keep ---
9 -

10 A. No; it----

11 Q. ---- recommending this----

12 A. ---- it was----

13 Q. ---- because of the first cut"?

14 A. ---- incident upon incident upon incident, so it was--it
15 was an ongoing trend. But, you know, again, the medical officer felt
16 that he was not suicidal because he felt in his opinion that he was
17 only doing it to gather attention, so he did recommend to keep him
18 off of suicide watch, but we felt we still needed to keep an eye on
19 him, because if he bled out on us, I mean, that would be a problem.

20 Q. Uh-huh. And, again, taking this person aside, what's the
21 next longest you've seen someone on POI continuously?

22 A. I don't recall. That one there was probably well--a little
23 over a year, I think.

1 Q. Uh-huh.

2 A. And after that I don't recall exactly. I mean, it wasn't -
3 -I don't know, ma'am, to be quite honest with you; that one just
4 stuck out because it was, you know, again, an extremely long time, I
5 thought.

6 Q. Are there any other ones that stick out for, say, being
7 more than 6 months?

8 A. No, ma'am; no.

9 Q. More than 4 months?

10 A. No. Again, you know, when you've got so many other things,
11 you've got--I mean, POI is not something that I really focus in on as
12 far as paying attention to how long somebody was on it, so there may
13 have been at the facilities that I've worked at before. I mean,
14 there probably was--may have been one at Quantico when I was a
15 commander there. I just don't remember, ma'am; I really don't.

16 Q. Can you tell me about the BUPERS Instruction?

17 A. Yes, ma'am.

18 Q. That just came out fairly recently, right?

19 A. Right; yes, ma'am.

20 Q. Okay. Why did that instruction come out?

21 A. We, meaning that the--my equivalent on the Navy side, and
22 ourselves just found it painstaking to get changes incorporated into
23 that SECNAV Instruction when they were warranted because of, you

1 know, the staffing that it had to go through and, you know, we were
2 looking at just a simple page change to that instruction taking 2 to
3 3 years; and so what we elected to do is said, "Well, you know, the
4 SECNAV Instruction gives us the authority to develop Naval
5 correctional policy. Why don't we go ahead and establish a BUPERS
6 Instruction, which is, you know, the Bureau of Personnel, which is a
7 two-star general--or admiral, and we can get changes incorporated in
8 a matter of weeks vice years now; and so that's kind of why we
9 developed a BUPERS Instruction to take the place of the SECNAV
10 Instruction.

11 Q. Uh-huh..

12 A. From a policy standpoint, the SECNAV will still exist,
13 ma'am; however, it will change and incorporate and really capture
14 only global-type correctional policy, not, you know, real specific
15 issues and will leave that to the BUPERS Instruction to handle.

16 Q. Let me know if you need to see this. If you do, I guess
17 I'll have it marked as an appellate exhibit, but the BUPERS
18 Instruction has a section that talks about people in segregation, -
19 ---

20 A. Uh-huh.

21 Q. ---- and it says, "Review of segregated prisoners," and it
22 says, "30-day review."

23 A. Right.

1 Q. "Administrative segregation PC," what's that, protective
2 custody?

3 A. Protective custody.

4 Q. And disciplinary segregation, and it says, "A credentialed
5 mental health provider must personally interview and provide a
6 written report on a prisoner remaining in Special Quarters for over
7 30 days. If segregation continues beyond 30 days, a credentialed
8 mental health provider shall make an assessment at least every 3
9 months or more frequently if prescribed by the brig medical
10 officer/psychiatrist/clinical services director. Prisoners in
11 Special Quarters may develop symptoms of acute anxiety or other
12 mental problems. Regular psychological assessment helps ensure the
13 mental health of anyone segregated over 30 days."

14 That, I don't believe, is in the SECNAV Instruction, is it?

15 A. No, ma'am; no.

16 Q. Where did that come from?

17 A. You know, I don't know. I do--it's--you know, we
18 participate in civilian corrections conferences all the time, and I
19 think that could have been something that was obtained as a best
20 practices from some of our civilian counterparts at either the FBOP,
21 you know, Federal Bureau of Prisons, and so forth, so I think that
22 was one of those things that was--we decided and probably the Bureau

1 of Medicine for the Navy could have had some influence on that, too,
2 and they probably--that was probably an input from them as well.

3 Q. From your training in corrections, is there--is there any
4 concern about persistent--I guess persistent maximum custody or
5 prevention of injury classification and status----

6 A. Right.

7 Q. ---- that that may either create or exacerbate mental
8 health issues?

9 A. You know, again, I think that's always a concern for at
10 least a commander, I think, and--which--which is the reason why, you
11 know, I think those medical professionals play such a heavy influence
12 in, you know, making those recommendations that they do.

13 Q. Well maybe I'm confused. I thought I heard you testify
14 earlier that you can put somebody on POI without----

15 A. Well from a POI status, you know, they don't--again,
16 because POI is not recognized in the SECNAV as a status; it's just,
17 you know, a responsibility you have, but I think, you know, long-term
18 effects should be a commander's concern, you know, at all times; and
19 I guess you take a look at it and say, "Okay, if, you know, is it
20 having a negative effect on him," but yet we're keeping him safe from
21 injuring himself, I think you kind of--kind of weigh the odds and
22 say, "Okay, mentally he's not doing well, but, you know, at least
23 he's not hurting himself because we're preventing him from doing

1 that," and you have to kind of weigh that, I think, so it's almost
2 like a catch-22.

3 MJ: I think that's all I have. Does either side have anything
4 further based on mine?

5 ATC[CPT VON ELTEN]: Yes, ma'am.

6 MJ: Go ahead.

7 **REDIRECT EXAMINATION**

8 **Questions by the assistant trial counsel [CPT von Elten]:**

9 Q. Chief Galaviz, could the counselor enter into CORMIS the
10 information that might be documented by the C&A board, to include
11 what recommendations were the basis for any disciplinary infractions
12 that might have been involved during that period?

13 A. I--I'm not sure, sir. I'm not sure. I know what they can
14 do is, you know, upload the supporting documents into CORMIS as a
15 result of that, but to go right into CORMIS to do that, they could
16 very well be able to. I'm not aware of it and it's just because I
17 don't work with it that often.

18 ATC[CPT VON ELTEN]: I'm handing the witness Enclosure 24 to
19 Appellate Exhibit 259.

20 Q. Would you review that?

21 A. [Did as directed] Okay.

1 Q. Could you say a counselor could enter the type of
2 information that would be documented on the form for a classification
3 and assignment board?

4 A. Uh-huh; yes, sir.

5 ATC[CPT VON ELTEN]: Thank you.

6 I'm retrieving Enclosure 24.

7 Thank you, Your Honor.

8 MJ: Anything from the defense?

9 CDC[MR. COOMBS]: Yes, Your Honor.

10 **RECROSS-EXAMINATION**

11 **Questions by the civilian defense counsel [MR. Coombs]:**

12 Q. Chief Galaviz, if the basis for placing somebody in POI was
13 a mental health concern, why wouldn't the opinions of a mental health
14 professional be required?

15 A. I mean, I don't know if it's necessarily always a mental
16 health concern.

17 Q. If that were the basis,----

18 A. Right.

19 Q. ---- if you're placing somebody on POI because of a mental
20 health concern, why wouldn't the recommendations of a mental health
21 professional be required?

22 A. I--to take somebody off of POI, sir? You know, again, our
23 regulations don't require us and doesn't even recognize Prevention of

1 Injury as a status. It's just a responsibility that we have to
2 prevent somebody from injuring themselves. So, I mean, again, I
3 would say that those recommendations should always be considered,
4 but, again, the staff should not feel that they're obligated.

5 The staff work with these individuals daily, you know, and
6 their--you know, what they see is also, you know, taken into account
7 as well, so, I mean, again, I don't agree with the statement made
8 earlier that, you know, maximum custodies act that way. I don't
9 agree with that, but if--but, yeah, I don't--why it's not required,
10 we only address it in the Suicide Watch--or Risk category.

11 Q. Now you've said on more than one occasion that POI is not a
12 status recognized within the SECNAV Instruction,----

13 A. Uh-huh.

14 Q. ---- correct?

15 A. Right.

16 Q. And you said it's a responsibility of the commander, the
17 general responsibility to ensure the detainee's health and safety; is
18 that right?

19 A. Yes, sir.

20 Q. And you'd agree with me, then, that using POI when there's
21 not a justification for it would be problematic.

22 A. Yes.

1 Q. Because it kind of circumvents the requirements under
2 Suicide Risk, does it not?

3 A. No. I say that it--I won't say it circumvents.

4 Q. Well, if someone's using POI to basically keep somebody in
5 a enhanced status and in this case remove clothing from them, ----

6 A. Uh-huh.

7 Q. ---- doesn't that kind of circumvent the requirements under
8 Suicide Risk?

9 A. No, because I think you've got a difference, you know,
10 again between the Suicide Risk and the example I gave earlier where
11 somebody was injuring themselves just for attention. I mean, they're
12 separate and distinct that there's differences there; and if the
13 staff believes that the individual still has the potential to injure
14 himself, although they've received recommendations that he's not
15 suicidal, I still think that commander has the responsibility to keep
16 a closer eye on him than he would someone else.

17 Q. So my question is: To use POI and also provide with that
18 removal of clothing, ----

19 A. Right.

20 Q. ---- does that not circumvent Suicide Risk?

21 A. Yes. I would agree that if you--removing of clothing to
22 the extent of where you're removing everything from an individual
23 would move you over into what would be classified as Suicide Risk.

1 Q. And I'm showing you Enclosure 47, again to Appellate
2 Exhibit 259. Page 105 of 388 starts to cover Suicide Risk ----
3 MJ: Okay, just I don't--I'm not sure where all that is. Tell
4 me what you're talking about.
5 CDC[MR. COOMBS]: Yes, ma'am. Appellate--this is the SECNAV
6 Instruction, ----
7 MJ: Okay.
8 CDC[MR. COOMBS]: ---- so Enclosure 47 to 259, and, ma'am, if
9 you turn to page 105.
10 [There was a pause in the proceedings while the military judge
11 located the page of the exhibit.]
12 MJ: All right. Go ahead.
13 Q. So at the bottom there, that is where Suicide Risk--the
14 provision for Suicide Risk ----
15 A. Uh-huh.
16 Q. ---- comes into play, does it not?
17 A. Yes.
18 Q. Okay, and if we see--if we turn over to page 106, at the
19 very top of that, this is the only time that removal of clothing, at
20 least to my knowledge, is referenced in the SECNAV Instruction; and
21 it says here that prisoners--the CO, OIC, or CPOIC may direct removal
22 of prisoner's clothing when deemed necessary.
23 A. Right.

1 Q. So following that under the--this Suicide Risk provision,
2 would you agree with me, then, that at least under the SECNAV
3 Instruction, removal of clothing must be if the prisoner is, in fact,
4 in Suicide Risk?

5 A. Yes. I mean the way it's listed there, yes, sir.

6 Q. And that would be why, then, Lieutenant Colonel Wright
7 might have sent the e-mail he did and why you might have queried
8 Chief Barnes like you did.

9 A. Correct.

10 CDC[MR. COOMBS]: All right, thank you.

11 WIT: Uh-huh.

12 MJ: Anything more--further from the government?

13 ATC[CPT VON ELTEN]: No, ma'am.

14 MJ: All right. I assume permanent--the same excusal rules as
15 we did before?

16 ATC[CPT VON ELTEN]: Yes, ma'am.

17 CDC[MR. COOMBS]: Yes, Your Honor.

18 **[The witness was duly warned, permanently excused, and withdrew from**
19 **the courtroom.]**

20 MJ: All right, in looking at the time, do the parties have a
21 way forward?

1 ATC[CPT VON ELTEN]: Ma'am, the United States recommends that we
2 start at 0930 tomorrow morning with Chief Averhart and hope to finish
3 Chief Averhart tomorrow.

4 CDC[MR. COOMBS]: No objection, Your Honor.

5 MJ: All right, anything else we need to address before we
6 recess the court for the evening?

7 ATC[CPT VON ELTEN]: No, ma'am.

8 CDC[MR. COOMBS]: No, Your Honor.

9 MJ: Court is in recess until tomorrow morning, at 0930.

10 **[The Article 39(a) session recessed at 1818, 5 December 2012.]**

11 **[END OF PAGE]**

1 [The Article 39(a) session was called to order at 0935, 6 December
2 2012.]

3 MJ: This Article 39(a) session is called to order. Let the
4 record reflect all parties present when the court last recessed are
5 again present in court.

6 Before we proceed on to the next witness, the court is
7 prepared to rule on the government's motion for reconsideration. On
8 16 November 2012 the government filed a motion requesting the court
9 to reconsider a finding in the court's 25 April 2012 ruling on the
10 defense motion to dismiss all charges with prejudice. The finding
11 the government asked the court to reconsider is the finding that the
12 government, quote, disputed that it was obligated to disclose
13 classified *Brady* information that was material to punishment only.
14 The basis for this proposed reconsideration is that this finding's
15 not supported by the record. The defense opposes.

16 The court has reviewed the filings by the parties, as well
17 as the filings regarding the original motion to dismiss. The
18 original motion to dismiss was extensively litigated prior--excuse
19 me, during the 24 through 26 April 2012 Article 39(a) session. The
20 court sees no point in doing it again. The court adheres to its
21 original 25 April 2012 ruling. The motion for reconsideration is
22 denied.

1 Do we have anything else to address before we call the
2 witness.

3 CDC[MR. COOMBS]: No, Your Honor.

4 TC[MAJ FEIN]: No, Your Honor.

5 MJ: Please call the witness.

6 ATC[CPT VON ELTEN]: Your Honor, the United States calls Chief
7 Warrant Officer James Averhart.

8 CHIEF WARRANT OFFICER 4 JAMES AVERHART, U.S. Marine Corps, was called
9 as a witness for the prosecution, was sworn, and testified as
10 follows:

11 DIRECT EXAMINATION

12 Questions by the assistant trial counsel [CPT VON ELTEN]:

13 Q. And you are Chief Warrant Officer 4 James Averhart of the
14 Naval Consolidated Brig Chesapeake?

15 A. Yes, sir.

16 Q. Please have a seat.

17 A. [Did as directed] Thank you, sir.

18 Q. Good morning, Chief Warrant Officer Averhart.

19 A. Good morning, sir.

20 Q. How long have you been a Marine?

21 A. I've been a Marine for 25 years, sir.

22 Q. And how many of those 25 years have you been in
23 corrections?

1 A. Twenty-two.

2 Q. And what positions have you held in your correctional
3 experience?

4 A. In my correctional experience, sir, I have served in every
5 enlisted billet in the correctional MOS, Marine correctional MOS
6 5831, from correctional specialist to brig duty officer for the Naval
7 Brig Ford Island; Waterfront Brig. At the Camp Lejeune base brig,
8 I've served at the--as the security operations staff OIC; watch
9 supervisor; duty brig supervisor; correctional custody staff NCO.
10 I've also served as the prisoner service officer; program officer;
11 correctional custody officer; program officer; executive officer; and
12 commanding officer for the Camp Lejeune base brig, Quantico base
13 brig, as well as the correctional custody unit officer; the deserter
14 officer for the Marine Corps; and also for 4 months the head of
15 Marine Corps corrections.

16 Q. What correctional schooling have you attended?

17 A. I've actually attended the--just had correctional courses;
18 was OJT'd and not--didn't have to go to cover the level of experience
19 and training; did not have to go to the Correctional School at San
20 Antonio.

21 Q. And when did you become a warrant officer?

22 A. I became a warrant officer in 1999, sir.

23 Q. How long did you work at the Quantico brig?

1 A. I worked at the Quantico brig for approximately--about 10
2 months, sir, 9 or 10 months.

3 Q. And what was your duty title at the Quantico Brig?

4 A. My duty title was the commanding officer, and as the
5 facility changed over to a pretrial confinement facility, the brig
6 OIC.

7 Q. Why did the facility change over to a pretrial confinement
8 facility?

9 A. Because of the BRAC decision in 2005, whereas the military
10 was downsizing, the Quantico base brig--Marine Corps corrections kind
11 of co-joined joint with the Navy corrections and the table of
12 organizations was changed at that time and--whereas different
13 facilities had a predetermined designation in which they would assume
14 once the law became order in August 2000--August 2011; everything had
15 to be taking place and in order set to change over.

16 Q. And what effect did that have on the number of detainees
17 held at Quantico, at the Quantico brig?

18 A. It was downsized, sir. Quantico base brig became a
19 pretrial confinement facility where all prisoners that was in
20 post-trial, they actually transferred to larger facilities, such as
21 the facility that I'm at--currently at now or those already in
22 existence and we just had the pretrial confinement mission.

1 Q. And what were your responsibilities when you were in charge
2 of the Quantico brig?

3 A. My responsibility was the custody and control of all
4 prisoners confined at the Quantico base brig, as well as the staff
5 and civilians, their safety and so forth, sir.

6 Q. Let's talk a little bit about PFC Manning's arrival and his
7 in-processing.

8 A. Yes, sir.

9 Q. When did you first learn PFC Manning was coming to the brig
10 at Quantico?

11 A. I learned that PFC Manning was coming to the Quantico base
12 brig probably about 2 weeks before he got there or a week before he
13 got there, sir.

14 Q. And how did you find out?

15 A. Via e-mail correspondence and a phone call from my
16 operations chief, Master Sergeant Papakie.

17 Q. When did--what documentation did you receive with PFC
18 Manning's transfer?

19 A. The first correspondence that I actually received, I saw a
20 e-mail, some e-mail traffic, and that was basically it. As far as
21 the documentation that I actually received, I personally did not
22 receive any documentation until the escorts who transferred him from
23 the facility that he was at to my facility, that's when I assumed

1 command of that paperwork and accepted Detainee Manning, Prisoner
2 Manning into confinement.

3 Q. And did you review that paperwork?

4 A. Actually, the next day, once he went through the in-
5 processing, the in-processing phase, I had the opportunity to look at
6 the paperwork and receive a briefing.

7 Q. And what did that paperwork say?

8 A. The paperwork, my main part of--in corrections that I
9 wanted to make sure that I had a legal confinement was to review the
10 confining order--confinement order, and the fine--the confinement
11 order was legal.

12 Q. What did the paperwork say about PFC Manning's confinement
13 in Kuwait?

14 A. Basically it talked about the things that had taken place
15 at the facility, i.e., the noose that was made, the suicide gesture;
16 receipt, again, of the confinement orders; told me the charges that
17 he was confined for; and things of that nature.

18 Q. What kind of charges was he confined for?

19 A. I saw Article 92; 128, assault. I think 92 was a
20 disobedience--a disobeying an order, or something like that; and the
21 134, which pertained to national security and documentation.

22 Q. What kind of specific behavioral incidents did the
23 documentation describe?

1 A. The documentation talked about, again, the suicidal gesture
2 in regards to the noose being made; the assault I think at the
3 facility; or the running around in the courtyard, how he had to be
4 restrained; and things of that nature.

5 Q. And how was PFC Manning in-processed?

6 A. How was he in-processed? He was in-processed as any other
7 normal prisoner. Once he--once he arrived at the facility, something
8 that took place prior to initial confinement was the DBS, the duty
9 brig supervisor, would meet the chasers along with PFC Manning
10 outside the facility. They would have the opportunity to look and
11 review the confinement order; make sure all the necessary paperwork
12 was intact. Again, the confinement, make sure it was a legal
13 confinement order, dated, a medical officer's signature stating that
14 he was fit for confinement; ID card or something to make sure to
15 identify him, who he actually was; and then enter into the facility
16 for--to start the initial processing.

17 Q. What about a background summary?

18 A. A background summary, an initial contact sheet was actually
19 done in that in-processing phase of initial confinement paperwork.
20 There is certain paperwork that the brig must complete in order to do
21 a proper confinement, you know, initial contact, family information,
22 background history to find out information on the individual, and a

1 lot of this information is derived by--from the prisoner just through
2 a question-and-answer series to get the--to obtain the information.

3 Q. Did you review that paperwork?

4 A. Yes, sir, I did review that paperwork as well.

5 Q. And when would you have reviewed it?

6 A. I reviewed that paperwork the next day after I received my
7 briefing.

8 Q. Do you remember what that paperwork said?

9 A. I do remember some of the paperwork, and it talked about,
10 you know, asking questions about have--about suicide, just different
11 basic information.

12 Q. What about his initial custody classification?

13 A. His initial custody classification was assigned as MAX
14 detainee Suicide Risk.

15 Q. And why was that?

16 A. It was due to the confining charges; due to the summary,
17 background summary information that was provided, you know, thoughts
18 of suicide, depression, anxiety, and things of that nature.

19 Q. What is the point scale used for the initial
20 classification?

21 A. The point scale is used--point severity is used to
22 determine upon initial confinement or in confinement the custody

1 classification that an inmate would normally be--once he enters into
2 the facility, what he would normally go into.

3 Q. But why did the DBS override PFC Manning's initial
4 classification?

5 A. The DBS overrode those--he have the authority to in the
6 performance of his duties--because of the background history that was
7 provided by Detainee Manning; because of the confinement order
8 itself; and because of the paperwork that he actually looked at and
9 reviewed during the time of the initial confinement.

10 Q. What does the process of in-processing a detainee teach
11 about how to live in a brig?

12 A. Well, after the in-processing has been determined by the
13 receiving and release NCO and then the individual is actually taken
14 to the berthing area, the living quarters in which he or she will be
15 placed in, they would go into an indoctrination phase, and there is a
16 myriad of subjects and discussions, classes in which the inmate get
17 taught on, you know.

18 Q. And what are those subjects?

19 A. They talk about things like customs and courtesies to
20 diseases to how to interact; your process of the DD 510s; how to make
21 things happen for you in the brig in reduction [sic] to your
22 counselor; and just behavior and things of that nature.

1 Q. Let's talk a little bit about some of those things you just
2 mentioned.

3 A. Yes, sir.

4 Q. What does the indoctrination teach a detainee about customs
5 and courtesies?

6 A. It teaches them about the rank structure; how to interact
7 with the POD; basically gives you a---

8 Q. I'm sorry. What is the "POD"?

9 A. Plan of the day, sir. I'm sorry.

10 Q. Please continue.

11 A. Plan of the day; basically gives you--give the inmate a
12 rundown from reveille to taps the things that are going on with the
13 orderly running of the facility.

14 Q. What does indoctrination teach a detainee about addressing
15 members of the brig staff?

16 A. You know, it teach them how to properly address the members
17 of the staff by their rank; that's basically it.

18 Q. How does a detainee address staff by rank?

19 A. He would just basically address them by their--once they go
20 through the indoctrination phase, they're--you know, we know that we
21 receive individuals from different branches of the service, and it
22 shows them and give them a scale of what the rank look like and talks

1 about, you know, basically aye, yes--yes or no, aye, aye, whatever
2 their rank is.

3 Q. What is the difference between using "yes" and "aye"?

4 A. "Yes" and "aye" is derived as once given an order, you
5 know, "aye" meaning in military customs and courtesies, "aye" mean
6 you understand the--the order that you have been given and you just
7 basically respond by "aye." If you ask the question, "Do you
8 understand?" That's a yes or no.

9 Q. Thank you.

10 What about the 510 process, is taught to a detainee who's
11 in-processed?

12 A. Yes, sir. The 510 process is the method of communication
13 between the prisoner and whatever branch he need--he--subject that
14 they need to get taken care of. If they wanted to, let's say, put
15 someone on their mail and visitation roster, they drop a 510, DD 510
16 requesting to add an individual to their mail and visitation roster.
17 If they want to receive a phone call--I'm sorry. If they want to
18 make a phone call at a certain specific time or receive a visit,
19 that's what they--they drop a DD 510 for it; and it's for a gamut--
20 for a gamut of reasons, but the DD 510 is submitted and directed to
21 the department that takes care of that particular request.

22 Q. And how frequently do detainees use the 510 process?

1 A. They use them all the time, sir; that is the method of
2 communication, more so to get things--make things happen for them as
3 well as utilizing their counselor.

4 Q. And what does indoctrination teach a detainee about his
5 counselor?

6 A. It teach the individual about his counselor that his
7 counselor is going to be his main source of communication between his
8 command, between his lawyer; the counselor is his advocate to make
9 things happen for him.

10 Q. Let's go a little bit back to the initial status of Suicide
11 Risk.

12 A. Yes, sir.

13 Q. Why was he put on Suicide Risk?

14 A. He was put on Suicide Risk, again, for the--the DBS had the
15 opportunity to override and look at the severity of his initial
16 confinement charges--the confining charges, his background history.

17 Q. What about his background history?

18 A. The background history basically related to some items of
19 concern for the DBS at that particular time upon initial confinement,
20 i.e., anxiety, depression. It gives, again, the upbringing and
21 things of that nature.

22 Q. What is the normal status used for a newly received
23 detainee who has a history of anxiety and depression?

1 A. Maximum security.

2 Q. No, status not custody.

3 A. I'm sorry; I'm sorry. Status, basically put in Prevention
4 of Injury.

5 Q. What if a detainee has a history of suicidal actions prior
6 to coming to the Quantico brig?

7 A. Suicide Risk.

8 Q. And what determination did you reach for PFC--did the brig
9 reach for PFC Manning?

10 A. Basically his background history and then the most recent
11 actions that took place in, I guess, Kuwait, where he was confined
12 at.

13 Q. And what was the status that was reached?

14 A. Suicide.

15 Q. Why did you remove PFC Manning from Suicide Risk on 11
16 August if Captain Hocter stated that he should have been removed on 6
17 August?

18 A. Why didn't I?

19 Q. [Indicated an affirmative response.]

20 A. Because, again, there was determining factors at that
21 particular time which I felt as the commanding officer after his
22 classification and assignment board had reviewed him and those

1 members had the opportunity to ask questions and proceed and look at
2 the things that had taken place within confinement.

3 Q. What does the SECNAV say about removing a detainee from
4 Suicide Risk?

5 A. It basically says that once the medical officer recommends
6 that the individual should not be on Suicide that I shall--the brig
7 OIC shall remove the individual from Suicide.

8 Q. And what does "shall" mean to you?

9 A. "Shall" mean he should be removed from Suicide at that
10 particular time, at a particular time to be determined.

11 Q. Let's talk a little bit about the initial handling
12 instructions the brig and you approved for PFC Manning.

13 A. Yes, sir.

14 Q. What were some of the privileges you granted PFC Manning
15 after indoctrination?

16 A. After indoctrination, basically Prisoner Manning received
17 the normal privileges that any other prisoner would receive in that
18 status; that's 20 minutes of recreation call; he received his phone
19 call; he received TV call; had the opportunity to receive the book of
20 his choice; and that's what I actually did with Manning. He did not
21 want a Bible, so I gave him the book of his choice, and he had the
22 opportunity to get any book that he wanted because there was a cart
23 there and that was it.

1 Q. What about visitation privileges?

2 A. Oh, sure, visitation privileges, sir; that's normal.

3 Q. And what about correspondence privileges?

4 A. Same thing, sir. He received the normal within the plan of
5 the day; received the same thing as every other prisoner received.

6 Q. And what about being authorized to speak to occupants of
7 other cells in a low conversational tone?

8 A. Sure, sir. He was authorized to speak to the prisoner if
9 the other prisoner desired.

10 Q. Let's go through those and the basis for them. How much
11 visitation was PFC Manning granted?

12 A. He was granted as much visitation as he desired, you know.

13 Q. What does that mean?

14 A. Meaning that visitation was conducted--held on Saturdays,
15 Sundays, and holidays and he would drop a DD 510 to state who was
16 going to visit him on those days and they was authorized to visit.

17 Q. What if PFC Manning wanted visitation during the week?

18 A. During the week, there would not have been a problem with
19 that as well. You drop a DD 510 to receive, you know, on those
20 special occasions, and I have the authority to approve those 510s.

21 Q. What visitation privileges did other detainees have?

22 A. The same.

1 Q. Let's talk a little bit about speaking to occupants of
2 other cells.

3 A. Yes, sir.

4 Q. How is PFC Manning able to talk to the occupant of another
5 cell if there's not somebody immediately adjacent to him?

6 A. If there's no one immediately adjacent to him, he can speak
7 in a low conversational tone down the row if--again, that's up to him
8 to initiate, him or the other prisoner initiate the conversation, you
9 know. I wouldn't have a problem with that, as long as they are
10 speaking in a low conversational tone and not disrupting the good
11 order and discipline of the facility, and that means yelling,
12 hollering down the row.

13 Q. And why are they not allowed to yell?

14 A. Because it's--it will create a disturbance, you know, and
15 also it will violate the good order and discipline.

16 Q. How often were--while you were the brig OIC were other
17 detainees placed adjacent to PFC Manning?

18 A. I think it was--actually I remember one time.

19 Q. And why weren't other detainees placed near PFC Manning
20 more frequently?

21 A. Well, there was no one else in that status for one, sir;
22 and the POI and this other individual's POI as well. I think he was
23 actually in the next cell over, one cell--in the cell in the next

1 cell over as well, but down the road, there was other detainees as
2 well and there was actually a cell interspaced in between them as
3 well.

4 Q. So most detainees had space between their cells?

5 A. Yes, sir; yes, sir.

6 Q. What phone privileges was PFC Manning granted?

7 A. PFC Manning was granted phone privileges too--granted the
8 opportunity to make phone calls as he desired, as well as he also
9 spoke to his lawyer occasionally as well.

10 Q. What phone privileges were other detainees granted?

11 A. The same phone privileges as well, sir.

12 Q. What television privileges were--was--were PFC Manning
13 granted?

14 A. He was granted the opportunity to receive--look at
15 television every day that he desired to and sometimes he didn't want
16 to and refused TV call.

17 Q. How much television could PFC Manning watch?

18 A. Actually, 1 hour, sir, and sometimes he was granted more
19 than that if he desired because on that status there was nobody else,
20 he was not competing for television call with anyone else, so he can
21 watch as much TV, you know, and that normally lasted 2 hours, maybe
22 3.

23 Q. What correspondence privileges did PFC Manning have?

1 A. He had the opportunity to write letters and to receive mail
2 as well during his time.

3 Q. And how much time did he have for that?

4 A. An hour for that, as well, sir. And that was actually
5 extended as well at a certain point.

6 Q. What correspondence privileges did other detainees have?

7 A. The same, sir.

8 Q. And what other television privileges did other detainees
9 have?

10 A. They had the same television privileges as well, but it
11 came a certain point whereas had a meeting and we looked for the
12 flexibility on the things that I could authorize without violating
13 the good order and discipline and normally the other prisoners
14 already received the hour TV call. It depends on what day and time
15 that it was; was it free time or was it a holiday and things of that
16 nature and that was normally in the plan of the day.

17 Q. What library privileges did PFC Manning have?

18 A. For PFC Manning, there was a cart that had books on it and-
19 -a lot of books and he was afforded the opportunity, again, to get
20 any book that he wanted off that cart.

21 Q. What library privileges did the other detainees have?

22 A. They had the opportunity to get books off the cart and at
23 the library as well, sir.

1 Q. And why couldn't PFC Manning go to the library?
2 A. Because of his status; that was maximum security.
3 Q. You mean his custody?
4 A. Yeah, I mean, I'm sorry, his custody, maximum security.
5 Q. Let's talk a little bit about his initial sunshine call.
6 A. Yes, sir.
7 Q. How--what does--what does "sunshine call" mean?
8 A. "Sunshine call" means, sir, it's just the opportunity, it's
9 understood that because of maximum security that they are in their
10 cell the majority of the day and that is basically 23 hours a day
11 average. We try to get them out to get fresh air on a daily basis
12 and things like that, so that's what that sunshine call would
13 normally do; get them out to get fresh air, to walk around, to
14 stretch out, you know, things of that nature.
15 Q. How much fresh air does a normal detainee get?
16 A. A normal detainee, there's a MDI or MDO, a medium outside,
17 they get about an hour, if they get out to rec call, you know, wasn't
18 inclement weather and things of that nature.
19 Q. Why the difference?
20 A. Because of the custody, the status.
21 Q. Why does the custody necessitate lowering the amount of
22 recreation time?

1 A. For a maximum security prisoner, they are authorized--
2 whenever a maximum security prisoner is out, there is no other
3 movement in the facility by prisoners, and so they're escorted by two
4 guards at that particular time.

5 Q. What is your experience in the Marine Corps for sunshine
6 call for maximum detainees at other facilities?

7 A. It's the same.

8 Q. What do you mean "it's the same"?

9 A. Meaning it's the same. Maximum security get 20 minutes of
10 sunshine call at other facilities as well; that's normal routine.

11 Q. Let's talk a little bit about some of the restrictions that
12 were placed on PFC Manning or----

13 A. Yes, sir.

14 Q. ---- reasons for them. What is "lockdown"?

15 A. "Lockdown"?

16 Q. [Indicated an affirmative response.]

17 A. "Lockdown," sir, is, again, for the maximum security
18 prisoners, you want to ensure that in the correctional facility
19 environment that you have 100 percent control; that no other
20 prisoners are moving around with the potential of hurting that
21 inmate. You want to make sure that you're directing, you know, that
22 inmate is going from Point A to Point B without any interruptions, in
23 the most expedient manner.

1 Q. And why was lockdown initiated when PFC Manning was moved?

2 A. Lockdown was initiated when any maximum security is moved
3 because of the issues I just--concerns I just mentioned, i.e., you
4 want to move that prisoner in a secure manner maintaining custody and
5 control from Point A to Point B.

6 Q. What is the purpose of putting a detainee in restraints?

7 A. Restraint is a control. The prison putting a detainee in
8 restraints is a control. Again, he's a maximum security inmate and
9 that mean he's potentially violent and dangerous; that means that
10 he's an escape risk, something to that nature.

11 Q. So restraint is a part of maximum custody?

12 A. Yes, sir, it is.

13 Q. Why are visits for some detainees in a noncontact booth?

14 A. Again, because of their custody and classification.

15 Q. Why does custody and classification necessitate being in a
16 noncontact booth?

17 A. Custody classification necessitate that because it gives
18 the, again, control. Sometimes the individual is not authorized to
19 make contact with their visitor because contraband may be passed
20 through; there may be some monitoring restrictions and things of that
21 nature.

22 Q. Why wasn't PFC Manning authorized to lie on his rack during
23 the day?

1 A. Because that's not the--excuse me, sir. Laying on the rack
2 is not part of the plan of the day. Again in a military
3 installation, it's part of the discipline. You know, no one else is
4 allowed to lay in their rack during the day, and all inmates are up
5 during the daytime. It's working hours.

6 Q. When you say "no one else is allowed to lie on his rack,"
7 what do you mean?

8 A. No other prisoners in that confinement facility is allowed
9 to lay in their rack unless it's--they're on bed rest, sick in
10 quarters, or something of that nature.

11 Q. And what is your experience in Marine corrections regarding
12 detainees being allowed to lie on their racks?

13 A. Sir, no other facility that I've worked at in my 22 years
14 of experience during the day have inmates been allowed to lay in
15 their rack unless, again, there is holiday routine. They're on free
16 time, and during free time, they can lay in their racks and things of
17 that nature.

18 Q. What about prohibiting gear in a cell?

19 A. Yes, sir.

20 Q. Why would you do that?

21 A. Due to the custody classification, they are not authorized
22 to have certain gear in their cell because of restrictions.

1 Q. What about the custody and classification that requires not
2 allowing gear in a cell?

3 A. Because of the special handling. You know, there may be
4 some extenuating circumstances that we do not allow, let's say, one
5 bulk of toilet paper or so forth in the cell because of, again,
6 concerns.

7 Q. What concerns?

8 A. Concerns if he was--the individual may have been a
9 Prevention of Injury or Suicide; may have been concerns of suicidal
10 attempts, things of that nature.

11 Q. What other concerns might you have about the use of items
12 in a cell?

13 A. Use of items in a cell as a weapon; maintaining contraband.
14 Again, for--and, again, unauthorized--unauthorized material.

15 Q. Why require a detainee to be--to remain in his cell during
16 fire drills?

17 A. During fire drills?

18 Q. [Indicated an affirmative response.]

19 A. If it's a drill, normally if it's a drill you may not want
20 to institute or allow that individual because it's a--it is a drill;
21 or you just wanted to make sure that--I wouldn't want to expose the
22 individual to certain areas or certain events when there is no reason
23 to; however, what I like to do, as well, I like to train because I

1 train, you know, the way we perform. If I'm not there or the staff
2 is not there, there may be an instance where there is an actual fire
3 at that facility. The staff need to be trained on how to properly,
4 we'll say in Prisoner Manning's case, the course of action in which
5 we'll be able to take care of him safely and securely, so that's why
6 it would be authorized, as well, during a fire drill.

7 Q. How does keeping him in his cell during the drill protect
8 his safety?

9 A. Again, sir, it's just a drill.

10 Q. Is that related to his custody or his status?

11 A. Well, it's related to his custody and his status, sir.

12 Q. Why is it related to his custody, first?

13 A. Well his custody because of manpower, manpower purposes to
14 going out to the yard, evacuation. You know, again, there's no
15 reason for that; to institute him or put him in that particular
16 situation are undue.

17 Q. And why is it related to his status?

18 A. Because, again, Prevention of Injury, we wouldn't want to,
19 again, put him in a--institute him into a situation or environment
20 that there is no reason to institute him in.

21 Q. Why limit PFC Manning to one utensil, a spoon?

22 A. Again, for the safety of PFC Manning, you know, and it's
23 control of the items in which we institute into a cell. We know that

1 we have one spoon that's in the cell, and we expect to get that one
2 spoon back after chow.

3 Q. How many--how many utensils do detainees on maximum custody
4 get?

5 A. Excuse me, sir?

6 Q. How many utensils do detainees in maximum custody typically
7 get?

8 A. One, sir.

9 Q. And how many utensils do detainees in Prevention of Injury
10 usually get?

11 A. One, sir.

12 Q. We talked a little bit about this, but I want to--but let's
13 talk about why limit the--or restrict access to hygiene items?

14 A. Because certain hygiene items, we'll say we'll start with
15 razors, sir, during hygiene call, the individual will get his razor
16 during hygiene call to shave; the aerosol can with the shaving cream
17 in it, he'll get that; soap as well. All of these items are
18 potentially--could be potentially used to harm himself or used as a
19 weapon as well.

20 Q. Why give razors to a detainee if he's on Suicide Risk?

21 A. Why give a razor to a detainee that's on Suicide Risk?

22 Q. [Indicated an affirmative response.]

1 A. Because he has the potential to commit suicide with that
2 razor.

3 Q. No, but why? To shave in the morning, why give him a
4 razor?

5 A. Well, during the controlled time of hygiene time, the
6 individual is given a razor to shave. You have to maintain hygiene
7 in the facility.

8 Q. What precautions does the facility take when giving a razor
9 to a detainee who is on Suicide Risk?

10 A. The precautions that are taken is once he's given that
11 razor, the staff sit there--stand there and watch the prisoner shave.
12 Once he gets done shaving, he will give that razor back.

13 Q. What about toilet paper?

14 A. Toilet paper, sir, for all prisoners that are on Prevention
15 of Injury/Maximum Security, toilet paper is taken for that instance,
16 as well, because that's an object to which they can commit suicide.

17 Q. Why----

18 MJ: Did I hear you just say that everybody on maximum custody
19 gets toilet paper taken away or just people on Suicide Risk?

20 WIT: Suicide Risk, ma'am.

21 MJ: Go ahead.

22 Q. Why were PFC Manning's conversations monitored?

1 A. PFC Manning's conversations were monitored--you mean during
2 visitation call or something like that, sir?

3 Q. Yes.

4 A. That directive came from, I remember, it came from, I
5 think, maybe CID or NIS or something like that; they directed that to
6 the facility. I was--I was not privy to why they was monitoring; you
7 know, that's not my concern.

8 Q. Let's talk a little bit about changes to PFC Manning's
9 handling instructions. You mentioned one earlier. What were some of
10 the changes you made to his handling instructions?

11 A. Some of the changes I made to his handling instructions, on
12 the onset I provided a--because of my concern for PFC Manning's
13 safety outside the facility, I directed the Kevlar helmet to be worn,
14 as well as a Second Chance vest be worn anytime he was outside the
15 facility. Anytime he was outside the facility, I wanted to make sure
16 that he was--my concern was that he was--had the minimum amount--I
17 mean the most amount of protection as possible in case some type of
18 incident would take place, as well as providing at some point I think
19 looking at the flexibility at the request of the command that we move
20 that 20 minutes of sunshine call to a hour time frame for PFC
21 Manning's well--and then that's also the time that I extended the
22 correspondence time, as well as TV time, sir.

1 Q. Let's talk about each of those in the order you mentioned
2 them. Why were you concerned for PFC Manning's safety outside of the
3 brig?

4 A. Sir, whether it was inside the brig or outside the brig, it
5 was my responsibility, he was under my cognizance, to ensure that he
6 was taken care of. Although other inmates are in confinement, they
7 were very patriotic. They knew why PFC Manning was there. They knew
8 the allegations against him, and they, you know, although they was
9 prisoners, they was still, again, patriotic and, you know, where
10 there's a little scuttlebutt; and also outside the gate when it comes
11 to the civilian population. You know, some may not understand. You
12 know, I was just concerned that something--if something should happen
13 in the transport of Prisoner Manning from my facility to the --
14 wherever he may be going outside the gate, then because I had signed
15 for him, he was still my responsibility in that sense.

16 Q. Let's come back to concerns about other inmates at the
17 facility. Why were you concerned something might happen outside of
18 the facility to PFC Manning?

19 A. There was just the--with the media attention, you know,
20 whether it's the news or paper or television, you know, I was
21 concerned that, you know, if you look at TV, you know, all kind of
22 things happening in this world, and I just wanted to make sure that
23 Manning was taken care of from Point A to Point B transport.

1 Q. What about chasers?

2 A. Yes, sir. The--one of the things that we did, we wanted to
3 make sure that if my guys were chasing, I have great guys, great
4 correction Marines, I wanted to make sure that I had qualified
5 individuals, specialized training. Also I know on the onset we had a
6 meeting. You know, that was my concern from Point A to Point B, you
7 know, whether there was individuals armed--going to be armed; what
8 were their qualifications; who was going to be escorting him, as
9 well, so I wanted to make sure that we had qualified chasers
10 escorting him.

11 Q. You mentioned recreation call. What change did you make to
12 his recreation call?

13 A. Recreation call, again, I extended that by an hour, but
14 also one of my open dorms, which was at the time living quarters,
15 made that into a gym. We had recreation gear in that gym, whether it
16 was a treadmill, a Ping-Pong table, mats. It was actually an indoor
17 gym, which we allowed PFC Manning to workout in.

18 Q. Were the machines operational?

19 A. Yes, sir, they were.

20 Q. Do you know if PFC Manning ever used the machines?

21 A. Yes, sir, he used them occasionally. Normally, he would
22 stretch and he would do a lot of walking; yes, sir.

23 Q. What do you mean "would do a lot of walking"?

1 A. He would just walk. Once that he'd get to the designated
2 area, he, you know, he was just walking. Again, he was walking. I
3 told him to get on the treadmill or--and things of that nature, but
4 he would normally just walk around--walk around the dorm itself, and
5 I strategically had staff personnel placed around the dorm.

6 Q. And why did you make that change?

7 A. Just in the flexibility and wanting to provide more
8 opportunity to do things, because, again, I understood that he was
9 locked down in his cell for an extended period of time.

10 Q. What did your staff tell you about recreation call? What
11 changes did they advocate?

12 A. I'm not sure I understand, sir.

13 Q. Did any member of your staff ever talk to you about
14 changing PFC Manning's recreation call?

15 A. I don't know specifically what you're, you know, as far as--
16 ---

17 Q. Do you remember your staff coming to you and saying, you
18 know, just talking with you about his privileges and suggesting any
19 changes to them?

20 A. I'm sure they may have did, sir, at some point in time.

21 Q. What changes did you make to his correspondence?

22 A. Correspondence was by just giving him an additional hour,
23 sir, to correspond.

1 Q. And why did you give him an additional hour?

2 A. Because it wouldn't interrupt with the plan of the day, for
3 one; and I understand that whether he was writing letters or reading
4 mail, it would afford a better opportunity, you know, to, you know,
5 take care of some things that he may have needed to take care of; and
6 I was in hopes also that it would kind of motivate him, as well.

7 Q. Why were you hoping that would motivate him?

8 A. You know, where he can be more active and communicate and
9 things of that nature and see that this is the process; this is how,
10 you know--you know, you don't reward for bad behavior but you reward
11 for good behavior, as well, and that was most like an incentive.

12 Q. What good behavior were you rewarding?

13 A. Meaning that I understand that he was in a restricted
14 environment, so allowing an additional hour for correspondence was
15 not going to hurt anything, but the fact was, you know, Manning, his
16 demeanor was quiet. Things that he was not normally disrespectful,
17 although he might have did some, you know, things that wasn't, you
18 know, people would have to look at, but for the most part he did what
19 he was told, when he was told, in, you know, in the environment that
20 he was in at that time, so I had no problems with, you know, being
21 flexible on some things.

22 Q. Let's talk a little bit about the determinations about PFC
23 Manning's custody and status.

1 A. Okay.

2 Q. What does "maximum custody" mean?

3 A. "Maximum custody" means that an individual is potentially
4 violent and dangerous; he needs immediate and continuous supervision.

5 Q. Why--what does "Prevention of Injury" mean?

6 A. "Prevention of Injury" means in a sense that you want to
7 protect that individual from injuring himself.

8 Q. And why----

9 A. And so you reduce and minimize those risks.

10 Q. Why might a detainee need to be protected from himself?

11 A. Because if he's shown a history of hurting himself or
12 anxiety and depression. From my experience, this is what I've seen
13 in the past, sir.

14 Q. Let's come back to that, but how often was PFC Manning's
15 custody and classification reviewed?

16 A. PFC Manning custody and classification was reviewed on a
17 weekly basis.

18 Q. Who made the ultimate determination about what PFC
19 Manning's custody and status would be?

20 A. I would have the final approval, sir.

21 Q. And why would you have final approval?

22 A. Because I was the brig commanding officer.

1 Q. What are some of the factors you consider for maximum
2 custody?

3 A. I considered the factor of escape risk; considered the
4 factor of his assault allegation; the potential length of--for the
5 confining charges, the potential length of sentence once and if
6 convicted. I had to look at all those factors; a low tolerance for
7 frustration.

8 Q. Where would--where are these factors discussed in the
9 regulations?

10 A. In the SECNAV 1640.9Charlie, sir; that was--that was my
11 relative guidance in which, you know, I'm governed by.

12 Q. And just mentioning potential length of sentence,----

13 A. Yes, sir.

14 Q. ---- we talked a little bit about this earlier, what--what
15 were the charges?

16 A. Again, the charges were 92--I think that was disobeying or
17 disobedience or something of that nature; 128, assault; and 134.

18 Q. And what was the 134?

19 A. The 134 was dealing with national security and, again, I
20 don't know the verbatim charge, sir.

21 Q. What effect did that charge have on PFC Manning's
22 confinement?

1 A. That effect had a great--the all--you know, and, again, per
2 the SECNAV, that effect--that charge had a potential to take this--
3 you know, the most opportunity to take this young man [sic] life over
4 him being in confinement for a long time.

5 Q. What about--what effect did that have with PFC Manning's
6 interaction--your concerns for PFC Manning's interactions with other
7 detainees?

8 A. I was very concerned about that. Again, you know, just the
9 mere allegations alone was threatening.

10 Q. How do other inmates react to charges like that?

11 A. Again, as I stated earlier, sir, a lot of those inmates are
12 very patriotic. You know, it doesn't matter what charges that they
13 were on. If they, you know, if their perception was that they had
14 one of their--their own doing something not in accordance with the,
15 you know, Uniform Code of Military Justice, they was very--they was
16 very, again, patriotic in regards to that.

17 Q. How often would you meet with PFC Manning?

18 A. I met with PFC Manning, I would see him--if I was in the
19 facility, I would see him on a daily basis. If I was in the
20 facility, doing my rounds, every day I'm mandated to do rounds, I
21 would come in the facility without doing work, but that's with every
22 detainee. You know, it was not out of the ordinary. I'd see every

1 individual that's in Special Quarters in the facility. I would see
2 them on a daily basis, and I made it a point to do that as well.

3 Q. And while you're doing your daily rounds, how long are you
4 talking with PFC Manning?

5 A. Maybe--it depends. Sometimes I was to come in and just do
6 my rounds. It depends on what I had going on that day, but I
7 probably spent anywhere from, say, 2 to 7 minutes. It wasn't a very
8 long time, and sometimes I would probably come back and try to strike
9 up a conversation with him, you know, see what was going on and not
10 say crack jokes, sir, but I would just kind of, you know, create
11 dialogue with him and I attempted to do that on several occasions.

12 Q. Let's talk a little bit about that. How--how much
13 conversation would you have with PFC Manning?

14 A. Again, if I'm in the facility, again, I normally go through
15 every day and ask him, "How's everything going?" "Good morning."
16 You know, he really--he's very courteous, rendered the customs of the
17 day; asked him how's everything going for him; everything all right;
18 anything he need to talk about; anything he wanted to tell me, you
19 know, and I really wanted and I put him in a position that if
20 something was going on that he needed to talk to me about, I'm here
21 for him, you know, as his commanding officer.

22 Q. And what responses would you get from PFC Manning?

23 A. He said everything was okay.

1 Q. What else would he say?

2 A. He said, you know, when I asked him, you know, he never let
3 on that anything was wrong at any time; and if something was going
4 on, he never told me anything was going on; that, you know, he was,
5 you know, treated wrong or being treated wrong by my staff and things
6 of that nature.

7 Q. How often did you talk with your staff about PFC Manning?

8 A. I would brief daily my senior enlisted advisor and those
9 chief--my chiefs, and when I say "chiefs," I mean those department
10 heads I would brief daily, you know, and that's about all inmates,
11 you know, but, you know, irregardless [sic] to their prisoner status.

12 Q. Let's get back to your staff in a moment, but what kind of
13 reports of behavior were you getting?

14 A. As far as----

15 Q. As far as PFC Manning goes.

16 A. ---- PFC Manning? If there was something out of the
17 ordinary that would take place, they would brief me on that, so
18 essentially, you know, because the population was so small but it was
19 glaring, you know. With PFC Manning being high profile, I would
20 brief daily; and anytime I was in the facility, I had daily
21 conversations about PFC Manning; and if there--again, if there was
22 something out of the ordinary that took place, I was made aware of
23 it.

1 Q. What kind of out-of-the-ordinary events were you notified
2 of?

3 A. I was notified of Prisoner Manning playing peek-a-boo in
4 the mirror; the attempt of looking at himself, he's lifting weights
5 and straining, you know, exertion; utilizing his spoon as--maybe as
6 like it was ice cream or something like that. I've had the
7 opportunity to observe Prisoner Manning, as well, just, you know,
8 sitting--maybe he was sitting on the rack, sitting and just, you
9 know, staring. I've also observed him reading, you know, so.

10 Q. What effect did this behavior have on your custody and
11 status determinations?

12 A. It had a great effect, you know, because, again, you know,
13 normally, you know, those inmates I don't see them, you know, playing
14 peek-a-boo and just doing things in the--in the--in their cells and
15 things of that nature, so I was concerned about that.

16 Q. Why does seeing things that are out of the ordinary concern
17 you to the point to change your custody and status recommendations?

18 A. Why did it concern me?

19 Q. [Indicated an affirmative response.]

20 A. Because it was not normal, sir. In my opinion, it was not
21 normal the--that--that's, you know, it calls for concern.

22 Q. What does--what does the abnormality, how does that affect
23 your decision?

1 A. Because, again, if I look at the fact of putting Prisoner
2 Manning into the general population, there was no doubt in my mind,
3 no doubt at all in my mind that something would have happened in the
4 general population, because, i.e., some prisoner would have provoked
5 him or he would have provoked some prisoner.

6 Q. What documents are you reviewing when you make
7 determinations about PFC Manning's custody and status?

8 A. I review the confinement--I'm sorry--classification and
9 assignment sheet. I also reviewed the assessment from the
10 psychiatrist, as well; and also if there was any other write-ups or
11 were there negative spot evaluation or maybe some type of write-up
12 saying that--about behavior and things of that nature, I would review
13 those as well; and I also take in the--the totality of other things
14 that may have taken place or could potentially take place.

15 Q. Where would you find this documentation?

16 A. What----

17 Q. Where would you find it?

18 A. As far as----

19 Q. Did you--were you looking at paper or----

20 A. Yes, sir.

21 Q. ---- or were you looking at a computer or were you looking-
22 ---

23 A. Yes, sir. I was looking at paper, sir.

1 Q. How often did you review CORMIS?

2 A. I reviewed CORMIS, sir, sometimes on a daily basis or
3 sometimes it was maybe a week or so. You know, I was pretty much
4 abreast of what was going on with the prisoners and the assessment of
5 it. You know, so the paper that would normally be in CORMIS, I would
6 have a hard copy of that, because that paperwork was naturally
7 normally generated up, as well.

8 Q. Let's talk a little bit about psychiatric recommendations.

9 A. Yes, sir.

10 Q. What psychiatric recommendations were you receiving about
11 PFC Manning?

12 A. I received a psychiatric recommendation, you know, from
13 Captain Hocter in regards to Prisoner Manning normally every week,
14 normally.

15 Q. And what would those recommendations say?

16 A. Normally, if Dr. Hocter would recommend take Prisoner
17 Manning off of POI or he can remain on POI or he was doing time on
18 Suicide Risk, remain on Suicide.

19 Q. So if Captain Hocter is recommending to take PFC Manning
20 off POI, why didn't you?

21 A. Because, again, you know, I understand there was a
22 recommendation and--but I had to look at the totality of the, you

1 know, the reason in--with the confinement and if I took him off, as
2 well, and concerns.

3 Q. So what effect did Captain Hocter's recommendations have on
4 your decisions?

5 A. I think Captain Hocter's recommendations, sir, although I
6 looked at those recommendations and was concerned, I wanted to have
7 more of--more information in regards to what was going on with
8 Prisoner Manning. You know, there was no communication in regards to
9 that. His--I felt that his write-up was basically generic.

10 Q. What do you mean "there was no communication"?

11 A. Well, sir, those communication between Captain Hocter and I
12 was not what I felt it should have been. You know--you know, he was
13 making these recommendations, but it was just normally the one line,
14 generic statement and no substance toward actually explaining to me
15 what was going on and how can we make this, you know, more--good.

16 Q. What did Captain Hocter tell you about PFC Manning being on
17 POI causing harm to PFC Manning?

18 A. He's not--never told me personally in regards to that
19 causing harm. You know, I know that we had a couple of meetings and,
20 you know, and that was basically it.

21 Q. What would you have done if Captain Hocter had come to you,
22 explained that POI might have been doing harm to PFC Manning?

1 A. Sir, then I would have been obligated, you know--in
2 corrections--being in confinement would not be the place for him, you
3 know, because I'm not--that's not a hospital. It's not a psychiatric
4 ward. You know, it's a prison. It's a federal prison, and, you
5 know, that would not have been the place for PFC Manning and I would
6 have moved and tried to attempt to get him out of that facility.

7 Q. So how much of a factor was Captain Hocter's
8 recommendation?

9 A. It was a factor. However, [pause] I had great--I had
10 weight in it, you know, and I was concerned about what he was writing
11 or not writing.

12 Q. What would you have liked to have seen written?

13 A. I would have liked to have seen, you know, I would have
14 liked to have seen a good assessment of PFC Manning, you know, but
15 did I think he received a good assessment from Captain Hocter? No, I
16 don't.

17 Q. What is a good assessment?

18 A. Meaning, you know, if I look at that one-liner, generic
19 statement that I felt that was generic that every week he wrote that,
20 checked the same block, that he needed further assessment, I think
21 that it would have played a great part if, you know, he would have
22 spoke with me and talked about the intricate details of if that was

1 mental--have some type of mental situation going on, you know, I
2 think that would have played a great part.

3 Q. What effect did--how often did you talk to members of the
4 classification and assignment board?

5 A. I talked to them, the classification and assignment board;
6 I talked to the senior member. I saw Master Sergeant Blenis was the
7 one that gave the basis for one, but every week once they did the
8 assessment board and I wanted to ask the hard questions, and I did
9 ask them questions on why, what was, you know, factors, and things of
10 that nature; you know, how did they come to what they came to, you
11 know.

12 Q. What effect did classification and assignment board
13 recommendations have on your ultimate decision?

14 A. It had a great deal, because these individuals saw him on a
15 daily basis. They were with him on a daily basis, and they tried to
16 create dialogue with him on a daily basis.

17 Q. What was your opinion of then Gunny Blenis?

18 A. I have a great opinion of Gunny Blenis. I think he's an
19 awesome Marine.

20 Q. Why?

21 A. Because, again, he's engaged. He's very passionate about
22 his job. I know that he was charged with, you know, normally he
23 wouldn't have had a caseload. He was charged--you know, he was my

1 most experienced counselor and he was the chief counselor and, you
2 know, he was charged with, you know, contacting and being the
3 counselor for Detainee Manning, so I had great respect for him, as
4 well.

5 Q. What effect did then Gunny Blenis's recommendations have on
6 your decision?

7 A. I thought--and I thought that Gunny made--took every effort
8 to communicate with Manning on a daily basis or a weekly basis, if
9 you will, and his recommendation meant a lot because he was the guy I
10 think out of all my staff, he was the individual who spent more time
11 with Manning.

12 Q. What was your opinion of Master Sergeant Papakie?

13 A. I think as the senior enlisted advisor, I think Master
14 Sergeant Papakie was a professional Marine, as well. You know, he's
15 a great Marine.

16 Q. What effect did his recommendation have on your decision?

17 A. It meant a lot, as well, because, you know, one thing I
18 could count on the Marines, you know, they're being consummate
19 professionals; I would seek their counsel, you know, as well. I
20 think they gave great advice, and they did not always say yes to
21 everything. You know, they would--they would, you know, engage if
22 they thought something was off line and they would help to keep me on
23 track and they would do what any commander would want their enlisted

1 Marines to do: to advise and advise wisely, not just say yes to
2 things.

3 Q. Were you ever ordered by a superior to keep PFC Manning in
4 a status or classification?

5 A. No, sir, I was not.

6 Q. Let's talk a little bit about the weekly report.

7 A. Yes, sir.

8 Q. What was the purpose of the weekly report?

9 A. From my correctional experience, sir, you know, I've had--
10 I've dealt with high profile prisoners before, and what I like doing
11 with that weekly report--and I call it a progress report. It may
12 have eventually been named something else--but my purpose for that
13 report because operationally the brig belongs to the base commander
14 and operationally it falls under the Security Battalion, the
15 commander, which was Colonel Oltman; and what I wanted to do was
16 basically do an assessment. You know, if--you know, because I
17 understood it was high profile, a lot of attention coming to the
18 case, I wanted to be able to provide the colonel a snapshot of
19 Detainee Manning's progress within confinement. You know, everything
20 that was going on with him, he should have been able to, for the most
21 part, look at this document and just say, you know, answer the
22 questions if he received a call from someone or somebody had a
23 question about that, because normally I didn't want people calling

1 me. I didn't, you know, like people calling me, asking me questions,
2 you know, the higher-ups, you know, and we established that from the
3 onset. You know, they should not be calling me; they should call the
4 commander.

5 Q. Let's talk a little bit about some language that appears in
6 those weekly reports, starting 29 December.

7 A. Yes, sir. Excuse me [cleared throat]; yes, sir.

8 Q. Now the weekly reports state, starting 29 December, the
9 brig OIC approves and directs that SND remain in heightened security
10 status, i.e., Prevention of Injury, until SND completes the pending
11 706 sanity board. What does that mean?

12 A. Yes, sir. During that time frame, sir, it was under my
13 impression that Detainee Manning was getting ready for a 706 sanity
14 board hearing; that was my understanding, you know, and I cannot
15 remember the exact source that it came from, but during that period,
16 because normally--that was in my statement--that we was preparing to
17 get him, you know, to a sanity board hearing, okay, not more so we,
18 the brig, but more so he was preparing for the--that was my
19 understanding, so that's why the statement was put in there and
20 that's the only thing that I could speculate the reason why because
21 there was nothing else that took place during that time frame.

22 Q. When--relative to when this report was made, when did you
23 think the 706 board was going to occur?

1 A. I think it was around December or January time frame, sir;
2 I'm almost positive.

3 Q. So when did you think the 706 board was going to occur?

4 A. I think around maybe the end of December time frame, early
5 January or something like that.

6 Q. What conclusions did you ultimately reach about PFC
7 Manning's custody and status?

8 A. That he remain maximum security, Prevention of Injury.

9 Q. How did you reach the determination for maximum custody?

10 A. Again, maximum custody, I looked at the, again, the factor
11 of low tolerance to frustration; that played a big part; that was
12 consistent in with Dr. Hocter--Captain Hocter would write as well,
13 you know. Yeah, that was a major factor because, again, normally,
14 you know, those individuals, you know, if they cannot--cannot accept
15 confinement, you know, those cause problems, you see problems from
16 that.

17 Q. What other considerations went into his maximum custody
18 determination?

19 A. Low tolerance for frustration; escape risk; his confining
20 charges, that was big.

21 Q. What about his behavior?

22 A. Sir, his behavior--yeah, his behavior actually played a
23 part in that as well. You know, when I look at the behavior piece, I

1 look at his normal behavior, you know, from the day-to-day oper--day-
2 to-day operational-wise, you know, reveille to taps. Again, he's in
3 his cell. You know, you ask him to do something and he's doing
4 something. You're not putting him in--he's not in a position as
5 every other prisoner to get in trouble or something take place or
6 happen. So, again, is he respectful? He's saying yes, no, aye.
7 He's standing up. You know, he--you call the row to attention; he's
8 standing up. You know, you ask him to do something and it's in that
9 environment, he does it. You know, however, you know, after taps or,
10 you know, periodically as well during the daytime and something you
11 know one would call, think it may be odd, may take place and those
12 items were annotated.

13 Q. What factors are you considering for his Prevention of
14 Injury's determination?

15 A. Again, a totality of the factors of his anxiety, his
16 depression. You know, the first state it appears. You know, that
17 was consistent. You know, I took all those into, you know,
18 consideration because, again, you know, I wasn't privy to--I'm not
19 privy and we're not privy to, you know, things that the attorney may
20 be telling them. You know, I don't think that I was being
21 overcautious in the simple fact because what I've seen in my
22 experience that you think that things are going well with the
23 individual and then the next minute something has taken place where

1 they have tried to hurt themselves or they have tried to attempt
2 suicide, so I took--you know, again, from my experience of what I see
3 in different cases, you know, to heart.

4 Q. What were you looking for to remove PFC Manning from
5 Prevention of Injury?

6 A. I wanted to see communication, more communication from--
7 between the counselor and PFC Manning. I wanted to see that
8 communication, not to accept why or accept the fact of the charges
9 but more so accept, you know, for the time being, he in confinement,
10 you know, and there's certain things that need to take place in
11 confinement in order to maintain good order and discipline and safety
12 and custody and control. There are certain things that need to take
13 place in that--in that confinement environment.

14 Q. What things need to take place?

15 A. You know, again, to maintain good order and discipline.
16 You know, what I wanted to see, again, when it comes to Detainee
17 Manning was more communication with his counselor, so, again, that--
18 those things that are taught back in indoctrination, you know, they
19 can talk about those and he can function in the general population.
20 You know, he'll be able to function effectively in the general
21 population; and also better communication from Captain Hocter would
22 have helped with that, as well, because, again, if you're saying that
23 it's--you know, Captain Hocter was spending once a week, maybe, for a

1 short period of time with Prisoner Manning and he's gone. He'd be in
2 and out and so that was not a lot of time, you know, to--that I felt
3 that was--that assessed--assessing, you know, Prisoner Manning.

4 Q. Did you ever consider taking PFC Manning off Prevention of
5 Injury?

6 A. Sure we did, sir; sure we did.

7 Q. And when did you consider it?

8 A. We consider it--when I say "we" considered it because it
9 was brought to me, you know, but there was always something that
10 would take place. You know, also, because I understood the, you
11 know, the scrutiny and I'd be, you know, naïve to sit here and say
12 that, you know, the--that people from the higher-up was not asking me
13 or the command, you know, Captain Haberland or someone would be
14 e-mailing or calling and, you know, talk about his POI status. And I
15 understood, you know, the scrutiny that was on his status, as well;
16 however, I had to look at the totality. So I looked at things on,
17 you know, what could we be flexible on? You know, when I'd think
18 things were going well, you know--you know, are we going to be able
19 to--we'd assess him; we reviewed him; you know, we've observed him
20 and we can take him off this and something would happen that calls
21 for concern.

22 Q. When--what time--what date would this have happened?

23 A. Excuse me, sir?

1 Q. What date would you have considered removing PFC Manning
2 from POI?

3 A. As commander, I can remove--I could have removed at any
4 time, but I would normally prepare to probably move him if I had to
5 look at a day of the week, I would probably do it on a Thursday so I
6 can observe him on that Friday as we go into the weekend.

7 Q. When during PFC Manning's confinement from July until your
8 departure in January did you consider taking him off of POI?

9 A. [Pause] I'm sure--unsure of the exact time--excuse me;
10 excuse me, sir, but that--and I know that there was a--you know, it
11 may have been probably five times on my tenure that I looked at--you
12 know, five or less times, you know, make sure that that exact month
13 and date/time group.

14 Q. Let's talk a little bit about 18 January 2011.

15 A. Yes, sir.

16 Q. Around that time period, what do you remember about
17 protests at Quantico?

18 A. I just remember that there was--there was protests being
19 scheduled and things of that nature.

20 Q. What effect did the protests have on your staff?

21 A. I armed me and my staff more in order to--I looked at my
22 capabilities and limitations; how could we continue to effectively
23 run the facility mission, period? You know, again, you know,

1 although I had Prisoner Manning in confinement, I had other prisoners
2 in confinement as well and I was just as concerned about, you know--
3 you know, so it wasn't my operation of life was just not focused
4 around Prisoner Manning. I had my prisoners and my staff that I had
5 to worry about as well.

6 Q. What happened on 18 January 2011 with PFC Manning?

7 A. What happened?

8 Q. [Indicated an affirmative response.]

9 A. PFC Manning was actually--I put him--directed that he goes
10 back on Suicide Risk/Maximum Custody, and that was after, you know,
11 actually my--I think it was my security chief I think--I'm thinking
12 it was Gunny Fuller, Gunnery Sergeant Fuller, came into my office,
13 you know, to brief me on what was going on. It was Gunny Fuller or
14 Staff Sergeant Lee, one of the two, briefed me on what was going on.

15 Q. And what were you briefed on?

16 A. I was briefed that something happened with Detainee Manning
17 at rec call--at rec call and then I actually wanted to go down and
18 just see what was going on myself.

19 Q. So how long did it take for you to go down?

20 A. Once I was briefed on what took place, I actually got up
21 from my desk, I remember I was in my office, and walked down to
22 Special Quarters at that time; and during that time frame Manning was
23 back in his cell and I think Master Sergeant Papakie was talking to

1 him at that time frame; and I entered Special Quarters and they gave
2 way and I began to talk to him.

3 Q. And how did PFC Manning appear before you started to talk
4 to him?

5 A. I'm thinking Manning was sitting down, but you could tell
6 that he was not his normal self. He seemed to be agitated. He
7 seemed to be just, you know, his speech was elevated. You know, he
8 just seemed to be wired up, you know, and it was just--again, it was
9 not the normal Manning that I--I'm used to seeing.

10 Q. What do you mean that "his speech was elevated"?

11 A. Meaning he was talking louder because he doesn't talk loud.
12 You know, he's very calm. You know, he always appeared to be calm to
13 me, you know, and that was the first time that I had the opportunity
14 to see him in that element.

15 Q. What did you discuss with PFC Manning?

16 A. I basically wanted to know what was going on; what was
17 causing him, you know, what--first of all, I wanted to know what
18 happened at rec call; why did he fall? You know, I wanted to know
19 did he--was he drinking enough water? You know, did he pass out?
20 What caused him to do the things that he did at rec call? What I was
21 briefed on, that he fell down, then he got up, and he ran to the
22 weights and he hid under the weights and he started crying, you know,
23 and that concerned me because that had never happened.

1 Q. And what did PFC Manning explain to you?

2 A. He didn't explain anything to me because I was asking him
3 questions and he began to ask questions, you know, and, again, his
4 voice was elevated and he wanted to know why was he here? His exact
5 words was, "Why am I here? Why are they staring at me? Why are they
6 looking at me?" and he was making comments like that, you know.

7 Q. And what was your demeanor at this time?

8 A. My demeanor?

9 Q. [Indicated an affirmative response.]

10 A. As it alway is--always is, I came down and I wanted to find
11 out what was going on so I began to question him and ask him; and
12 then--and he stated--he yell out, "Why are you yelling at me?" I
13 said, "Manning, I'm not yelling at you." I said, "My voice is loud."
14 You know, I said, "I'm loud." I said, "I got a big mouth." You
15 know, I said but I'm not yelling at him, because I told him I was not
16 yelling at him, and I purposely at that time, you know, because, you
17 know, if I was agitating him, I wanted to lower my voice and that's
18 what I do at times. I lower my voice, you know, purposely, you know,
19 in a controlled manner and talk, you know, so I, you know, can talk
20 to him at that time frame and, again, continue to ask questions and I
21 told him to sit down. I told him to sit down. I said, "Hey,
22 breathe," you know, and then at that point in time he just exploded.
23 He started hitting hisself [sic] in the face, on the head, you know,

1 and I told him, "Calm down; calm down," and at that point in time I,
2 you know, he had already showed me enough at that time frame. I told
3 him I was sorry, but I wanted him to go on--back on Suicide.

4 Q. How much force was PFC Manning using when he was striking
5 himself in the head?

6 A. Sir, I had the opportunity to see him, and it concerned me.
7 He was using extreme force, you know, and it was enough to concern
8 me.

9 Q. And what did you order in response?

10 A. I ordered him--that he be put back on Suicide Watch.

11 Q. Why?

12 A. Because it concerned me. You know, that concerned me and
13 that was within my authority at that point in time and, again, I was
14 just concerned for him. You know, I didn't know what he would do. I
15 can't remember what day of the week it was, but I didn't know what he
16 would do after that because he was pretty riled up.

17 Q. What concerns did you have?

18 A. I was concerned that he would hurt himself [sic].

19 Q. What role does a SORT team play at this event?

20 A. After I directed the master sergeant to put--to put him on
21 Suicide Risk, you know, the master sergeant told me--I was told that--
22 --it was a master sergeant. The master sergeant began to ask for the
23 clothing items, whatever the case may be, and Manning appeared to be

1 negotiating, so, you know, and during this type of incident, you
2 know, you have explained the correctional environment. Again, it
3 goes back to indoc: You're asked for something; you give it to them.
4 There's no time to negotiate. He's not in a negotiating role. You
5 know, if he was not going to give the items that were requested of
6 him, then the SORT team purpose is to go in to restrain to get those
7 items that were requested. That's----

8 Q. What happened after----

9 A. ---- their sole----

10 Q. ---- you ordered the SORT team to assemble?

11 A. What happened after?

12 Q. Uh-huh.

13 A. You know, what I normally do because I have to be--remain
14 impartial, you know, a lot of those times and, you know, in those
15 type of events, you know, I should not move from behind the wire;
16 routine is for me to go into a lockdown. I move from out of the
17 affected area as the commander because I'm going to have to be the
18 one to give the orders, set up the command post, or whatever, so my
19 job is to get out of that area; but the SORT--SORT commander and the
20 negotiator at that point in time negotiate to get the items and
21 things of that nature; and, you know, some of the things that the
22 SORT do--the SORT suited up. You videotape it. You know, if there
23 is a potential--and that's by the order. If there's a potential to

1 utilize a SORT or force in that nature, you want to videotape it.
2 You videotape it for the legalities of the situation, you know, so
3 those members are briefed on their role. They are briefed on their
4 role on the SORT; if you should have to enter the cell what each
5 member [sic] role is to do and then you also brief the negotiator as
6 he, you know--I'm saying "negotiator"; the individual who asked him
7 for the items and medication. In that case I think it was probably
8 Master Sergeant--Gunny--Master Sergeant Blenis.

9 Q. Why not send the SORT team in immediately?

10 A. Because you're--again, because of the legalities. You want
11 to ensure that, Number one, you're not--those individuals are briefed
12 on what is going on; always use the least amount of force if need--
13 if--you know, that the situation dictates and they should have been
14 briefed on what prisoners--what prisoner, what cell location, what
15 prisoner and the demeanor of that individual and what's going on and
16 the purpose for entering into the cell. They have to be briefed on
17 every aspect of why, you know, just to make sure all individuals are
18 thoroughly informed on what needs and will take place.

19 Q. When did the SORT team stand down?

20 A. The SORT team stood down after PFC Manning gave the--his
21 items that were requested of him, and it was my understanding that
22 once the--everything was being videotaped that that's when he
23 complied.

1 Q. When did Captain Hocter arrive?
2 A. A couple hours later.
3 Q. A couple hours later after?
4 A. After everything was secured, Detainee Manning was given
5 his items--given his items and then given--given the items, then
6 that's when, you know, everything was secured.
7 Q. Why did you wait to remove PFC Manning from Suicide Risk on
8 20 January after Captain Hocter stated he should be removed from
9 Suicide Risk on 18 January?
10 A. Again, sir, on that date, I witnessed PFC Manning action
11 [sic]. I witnessed; I wasn't told this. I witnessed, I saw the look
12 in his eye--eyes; that was a look that I hadn't seen--you know, I've
13 seen only a couple of times, you know, in the performance of my
14 duties from prisoners, you know, in the 22 years. I seen that look
15 in Prisoner Manning, you know, whether it was by design or he was
16 truly being affected, you know, this young man was experiencing
17 something that day; and from the time that Captain Hocter came to
18 that facility, the length of time that it took him to get there and
19 the length of time it took him to get there and leave, it was not a
20 sufficient amount of time to properly evaluate this young man.
21 Q. Around this time do you remember receiving a DDD--a DD 510
22 from PFC Manning?
23 A. Yes, sir.

1 Q. What do you remember about the chit?

2 A. I think around the 20th--21st--20th time frame when I--the

3 day I took Manning off Suicide, there was a chit in my box, DD 510

4 box for--CO 510 box, and I check that box--and I check that box every

5 day. I had a DD 510, which was dated 7 January, in that box; that

6 was from 7 January to the 20th in that box, and I didn't understand

7 why it was the 20th and I'm just seeing this chit, but why is just

8 now in my box because it gives an illusion from the 7th to the 20th

9 the box hasn't been checked and I know the box had been checked

10 because I personally check it; and so I actually, you know,

11 questioned Manning because, again, you know, after that 48-hour time

12 frame, the day I took Manning off Suicide, I had the opportunity to

13 talk to him. You know, I still came in and talked to him, you know,

14 after the fact, and he was very apologetic. You know, he apologized

15 actually for his actions. And I asked him about the chit. I said,

16 you know, because, again, he was supposed to go before the C&A, I

17 asked him, I said, "Manning, I got this chit from you," and he

18 actually stated that he could have had the days mixed up. That was -

19 -that was just the comment that he gave me is he could have had the

20 days mixed up.

21 Q. Let's talk a little bit about that box.

22 A. Okay.

23 Q. How is it secured?

1 [The civilian defense counsel stood up.]

2 MJ: Yes?

3 CDC[MR. COOMBS]: Your Honor, could we have a 15-minute comfort
4 break?

5 MJ: All right, any objection?

6 ATC[CPT VON ELTEN]: Your Honor, I have about 3 minutes left.

7 MJ: Can you wait?

8 CDC[MR. COOMBS]: Sure.

9 MJ: Finish up.

10 **DIRECT EXAMINATION CONTINUED**

11 **Questions by the assistant trial counsel [CPT VON ELTEN]:**

12 Q. How was the box secured?

13 A. The box is secured, sir--is secured. It has a slot. It's
14 on a roller, and the chit is rolled to the detainee--the prisoner's
15 cell on a daily. I'm the only one that has a key to that box and
16 also there are several other boxes on that, the mailbox for
17 correspondence, like where they brought mail at, and this box was
18 rolled to their cell and they had the opportunity to drop their chit
19 or their mail or whatever the case may be into that box.

20 Q. Let's wrap up by discussing your departure briefly. When
21 did you relinquish command?

22 A. I think I relinquished command around January 24th,
23 somewhere around there, sir.

1 Q. And why did you relinquish command at that time?

2 A. Because I was actually going down to--I had order--
3 reception of orders. Actually before I went over to assume the
4 duties at the brig, I had orders in the system. I received Web
5 orders because, again, going back to the BRAC 2005 decision, the
6 structure of Marine Corps correction had changed. You know, with the
7 downsizing of those facilities, normal Marine facilities was going
8 into business with the Navy, and my job at the time was it was a
9 newly formed facility that's going to be at Chesapeake, Virginia,
10 brand new, so I had moved down to Norfolk with a minimal staff of 10
11 at the time to build that TO and that structure to what it currently
12 is today of 78 Marines, so I have 78 Marines at the Chesapeake
13 facility, but the job was to go down and open that new brig up; so I
14 went down to as a--as the Marine Corps appointed representative to
15 serve two phases: as the brig--I'm sorry, sir--as the Marine
16 Detachment commander in charge of all those Marines assigned to that
17 facility, as well as the operational officer working with the Navy
18 and basically doing the same jobs but working with the Navy and what
19 I do now, so that----

20 Q. And when did you receive those orders originally?

21 A. I actually received the orders again prior to actually
22 going over to the--assume the duties as the brig CO. I had orders in
23 the system. I knew I was going to be leaving at some point,----

1 Q. So prior----

2 A. ---- so I----

3 Q. ---- to assuming command at Quantico?

4 A. Yes, sir, prior to assuming command at the Quantico brig,
5 so around March of 2010, I suppose, March, April time frame, that's
6 when I received orders. Again, it was all in response to the BRAC
7 decision, the TO change with the one CW05, Chief Warrant Officer
8 Galaviz, being at Headquarters, Marine Corps. The Marine Corps rates
9 three CW04s. Myself went to the Chesapeake facility; you have one at
10 the Miramar brig, who was actually at the Camp Pendleton brig and he
11 moved down--we moved--all moved during the same time, moved down to
12 the Miramar brig and you had the officer that was at the Lejeune brig
13 move down to the Charleston brig to work. Again, all CW04s, the
14 three CW04s working at the Navy brigs with their Marine Corps
15 structure of Marine Detachment and working with the Navy ---

16 Q. Thank you.

17 A. ---- and it was all by design.

18 ATC[CPT VON ELTEN]: Thank you, Chief Warrant Officer.

19 WIT: Yes, sir.

20 MJ: All right, let's take--10 or 15 minutes; what would you
21 prefer?

22 ATC[CPT VON ELTEN]: Ten minutes, Your Honor.

23 CDC[MR. COOMBS]: That's fine, Your Honor.

1 MJ: All right, court is in recess till 5 minutes after 11.

2 [The Article 39(a) session recessed at 1055, 6 December 2012.]

3 [The Article 39(a) session was called to order at 1110, 6 December
4 2012.]

5 MJ: This Article 39(a) session is called to order. Let the
6 record reflect all parties present when the court last recessed are
7 again present in court.

8 Mr. Coombs?

9 **CROSS-EXAMINATION**

10 **Questions by the civilian defense counsel [MR. COOMBS]:**

11 Q. Chief Averhart, I remind you, you're still under oath.

12 A. Aye, sir.

13 Q. Now, we had a conversation on the phone, correct?

14 A. Yes, sir.

15 Q. And during that conversation, you informed me that a few
16 days in advance you learned that PFC Manning would be coming to
17 Quantico.

18 A. Yes, sir.

19 Q. And CW5--05 Galaviz, his office was the one that informed
20 you initially.

21 A. Informed the brig, sir; yes, sir.

22 Q. And you know CW5 [sic] Galaviz?

23 A. Yes, sir.

1 Q. The two of you have known each other for almost 10 years?
2 A. Yes, sir.
3 Q. When PFC Manning arrived at the brig, that was, I believe,
4 on 29 July 2010?
5 A. Yes, sir.
6 Q. And he arrived roughly around 2200 hours.
7 A. It may have been a little bit before, sir.
8 Q. But it was later in the evening.
9 A. Yes, sir; it was later in the evening, sir.
10 MJ: And what was that date you said? I'm sorry.
11 CDC[MR. COOMBS]: 29 July 2010, ma'am.
12 Q. The duty brig supervisor reviewed the Inmate Background
13 Summary and completed what's called an Initial Custody Classification
14 Determination, correct?
15 A. Yes, sir.
16 Q. And if I'm correct, that's a DD Form 2711?
17 A. Yes, sir.
18 Q. The DBS initially put a score down of 5, correct?
19 A. Yes, sir.
20 Q. So not 10, it was actually 5; is that your memory?
21 A. It was 5, sir.
22 Q. And that's obviously significantly lower than the 12-plus
23 points normally required for MAX.

1 A. That's correct, sir.

2 Q. But despite the low score, the DBS chose to override the
3 custody determination and assign PFC Manning to maximum custody.

4 A. Yes, sir.

5 Q. The DBS also based upon looking at certain documents and
6 his previous suicide watch cited that as the rationale for the
7 maximum custody determination, correct?

8 A. Yes, sir.

9 Q. Now as the brig commander, you approved of the maximum
10 custody?

11 A. Yes, sir, I approved the maximum custody.

12 Q. And you also decided that PFC Manning should be placed
13 within special handling instructions of Suicide Risk.

14 A. That was determined the night prior, sir, and I concurred
15 with it the next day, sir.

16 Q. All right, so the DBS made that determination as well?

17 A. That's correct, sir. He had the authority within his
18 duties. He has the authority to override as well as to place the
19 initial custody classification. He has the authority to place the
20 individual in the custody that he see [sic] fit at that time.

21 Q. Okay. And at that time, when you approved it the following
22 day, what factors did you consider in order to say that MAX and

1 Suicide Risk was the appropriate custody and classification for PFC
2 Manning on 30 July 2010?

3 A. Sir, I looked at, again, upon the initial confining
4 charges; his background summary paperwork that had transferred with
5 him to the Quantico facility; and----

6 Q. Was there anything else, Chief Averhart?

7 A. No, that was it, sir.

8 Q. Okay.

9 A. That I remember.

10 Q. So the limited paperwork that you had was the stuff that
11 happened in Kuwait?

12 A. Yes, sir.

13 Q. The charges that you were aware of at that time?

14 A. That's correct, sir.

15 Q. And basically that was it----

16 A. The initial contact sheet, the background summary, if you
17 will; statements and the yes or no answers of the statements that he
18 had put in those when they asked for remarks or comments, his write-
19 up--his write-ups, that's what I took----

20 Q. Okay, was that----

21 A. ---- into consideration.

22 Q. ---- the "always planning, never acting" statement; were
23 you aware of that one?

1 A. I became aware of that, yes, sir.

2 Q. Were you aware of it on 30 July?

3 A. Yes, sir.

4 Q. Okay. So was that also part of your factors?

5 A. Yes, sir, definitely; definitely.

6 Q. All right. Now you drafted weekly progress reports on PFC

7 Manning.

8 A. Yes, sir.

9 Q. And this was a directive from Colonel Choike?

10 A. No, sir. Again, the progress report was--the initial

11 progress report, again, was my--was my--is what I wanted to be a

12 snapshot to the commander, you know, to show--to show actually what

13 it is that Manning was doing in confinement and, again, it should

14 have been took from me to my commander but this thing morphed to

15 everybody, you know, and I'm sure that maybe the commander, you know,

16 he may have wanted, you know, to talk to--spoke with Colonel Oltman

17 but that was not directed to me as far as a progress report. I

18 initiated the progress report through my commander, which was Colonel

19 Oltman.

20 Q. I just wanted to make sure you understand so we're not

21 confusing your answer. I want you to understand my question.

22 A. Okay.

1 Q. Is your testimony that, as you sit there today, that
2 Colonel Choike did not direct you to do weekly progress reports?

3 A. He did not direct me directly.

4 Q. All right. Is your testimony, as you sit there today, that
5 Colonel Choike did not direct that weekly progress reports be
6 submitted to him?

7 A. Sir, not to me. You know, my----

8 Q. Were you aware of Colonel Choike direct--giving an order
9 that he receives weekly progress reports?

10 A. No, sir, I was not.

11 [The civilian defense counsel handed a document to the court
12 reporter. The court reporter marked the document as AE 440A and
13 handed it to the civilian defense counsel.]

14 CDC[MR. COOMBS]: I'm showing the witness what's been marked
15 Appellate Exhibit 440Alpha.

16 Q. Chief Averhart, can you see who sent this e-mail?

17 A. Yes, sir.

18 Q. And can you see your first sentence?

19 A. Sir, per your directive, the following progress is provided
20 for your review and information, sir.

21 Q. And who are you sending it to?

22 A. I sent that to Colonel Oltman.

23 Q. And who else?

1 A. I cc'd Colonel Choike.

2 Q. Okay. So go ahead and take a look at that, because I want-

3 -maybe you're just forgetting this, so I don't want you to say

4 anything that's not true,----

5 A. Okay, sir.

6 Q. ---- so go ahead and take a look at the e-mail and when

7 you're done with that look up at me and then I'll ask you a few

8 questions.

9 A. [Did as directed] Yes, sir.

10 Q. All right, so I'm going to give you another opportunity and

11 you can tell me if that's still your testimony, but did you realize

12 that the directive was coming from Colonel Choike?

13 A. Okay, sir, again, the way it's writing--written, okay, it

14 was not a directive in the sense, you know, the progress report

15 initially was my snapshot to the commander. Okay, now was that

16 conversation, now, you know, looking at this e-mail, was that

17 conversation in regards to keeping him abreast, that's what I

18 consider directed, keeping him abreast of what was going on.

19 Q. Colonel Choike testified that he gave the directive in

20 order to have this weekly report sent up to him based upon

21 conversations with General Flynn.

22 A. Okay.

23 Q. That never got to you?

1 A. I never received a directive directly from Colonel Choike,
2 sir. Colonel Choike--and this is Colonel Oltman, my direct--my
3 direct reporting senior and which, again, the progress report
4 initially when it started just to keep everything open and
5 transparent was myself generated that document and as the document
6 grew from what it initially started at was keep my commander directly
7 involved with what was going on.

8 Q. All right.

9 A. So I never personally received a directive from Colonel
10 Choike, no, sir.

11 Q. Well you knew that Colonel Oltman was forwarding these
12 reports to Colonel Choike, correct?

13 A. Yes, sir; I became aware of that.

14 Q. And Colonel Choike is the base commander?

15 A. Yes, sir.

16 Q. You also knew that Colonel Choike was sharing these reports
17 with General Flynn.

18 A. Yes, sir; that became--I became aware of that.

19 Q. And General Flynn was the commanding officer for MCCDC?

20 A. He was the commanding general, sir.

21 Q. What?

22 A. He was the commanding general.

23 Q. For MCCDC.

1 A. General Flynn was commanding general for MCCDC, yes, sir.

2 Q. And, in fact, Colonel Choike informed you on 10 August 2010

3 that Lieutenant General Flynn was concerned that PFC Manning was a

4 suicide risk.

5 A. Okay; yes, sir.

6 Q. Is that correct?

7 A. Not me directly, sir, and more so I'm not sure if that was

8 at one of the meetings or whatever the case may be, but, again, I

9 became aware and again all--everybody became aware more so in the

10 sense of concerns.

11 Q. All right, so everyone is aware that Lieutenant General

12 Flynn was concerned that PFC Manning was potentially a suicide risk.

13 A. Okay, no, I'm not saying that everyone was aware that

14 Lieutenant General was--Lieutenant General Flynn was concerned that

15 Manning, no, I'm not saying that. What I'm saying is that, okay, I

16 want to be clear with what I'm saying; I want to make sure of----

17 Q. Sure.

18 A. ---- my testimony. I'm not saying that Lieutenant General

19 Flynn was airing this out to his base. All I know is that Colonel

20 Choike, you know, it may have been mentioned in a meeting, but, you

21 know, nothing came directly from me. I never received any orders

22 from General Flynn to do anything and more so Colonel Choike to do

23 anything.

1 Q. Well I'm not asking that. I'm just simply saying you were
2 aware from Colonel Choike as of 10 August 2010 that Lieutenant
3 General Flynn considered PFC Manning to be a potential suicide risk.

4 A. No, sir.

5 Q. You--that was never----

6 A. Not--not--not to be a suicide risk, no, sir.

7 Q. And, again, I don't want you to get confused. I'm not
8 saying that Lieutenant General Flynn was ordering him to be in
9 Suicide Risk,----

10 A. Okay.

11 Q. ---- okay. What I'm saying is Lieutenant General Flynn
12 expressed his concern that PFC Manning might be a suicide risk. Do
13 you see the difference?

14 A. Yeah, I see the difference with that, sir.

15 Q. All right, so based upon that question, is your answer that
16 Colonel Choike never expressed to you that Lieutenant General Flynn--
17 --

18 A. That is my testimony, sir.

19 Q. Okay. So then at this point, apparently, you're doing
20 these weekly reports and you are participating in weekly meetings
21 with Colonel Choike regarding PFC Manning.

22 A. Not weekly meetings with Colonel Choike, no, sir. During
23 that tenure--my tenure there once Prisoner Manning came aboard, I

1 think we may have had two or three--two meetings, two or three
2 meetings. We had a couple meetings at the base level with all
3 parties involved, especially during that time of the protests and
4 things of that nature, but I may have met with Colonel Choike--
5 Colonel Choike maybe three times, sir.

6 CDC[MR. COOMBS]: Okay.
7 [The civilian defense counsel handed documents to the court reporter.
8 The court reporter marked the documents as AE 440B and AE 440C and
9 handed them to the civilian defense counsel.]

10 CDC[MR. COOMBS]: I'm retrieving from the witness what has been
11 marked Appellate Exhibit 440Alpha, and I'm handing the witness
12 Appellate Exhibit 440Bravo.

13 Q. Do you see what the tenor--or what the subject matter of
14 this e-mail is?

15 A. Yes, sir.

16 Q. It's "Weekly Meeting with Colonel Choike."

17 A. [Pause] What it say, sir, is from Lieutenant Colonel Greer.
18 ALCON, Colonel Choike would like to have a weekly Manning update in
19 person this next Wednesday at 1500 in the conference room at Lejeune
20 Hall. He specifically requested that Captain Hocter and Chief
21 Warrant Officer 4 Averhart be there. Captain Haberland, Colonel
22 Choike requests that one of the prosecution and one of the command

1 reps be present as well. We can conference call you in so you do not
2 need to make the trip down.

3 Q. All right, so in this instance, Colonel Choike is asking to
4 have the weekly meeting in person, correct?

5 A. Yes, sir. He asked for--he asked that he have the weekly
6 Manning update, which is that progress report for this specific week,
7 September 10th time frame, he wanted to meet in person, sir.

8 Q. All right, and this was, again, a directive from Colonel
9 Choike.

10 A. That was via his SJA to Colonel Oltman as well as the chief
11 of staff and the battalion commander--or battalion XO. Colonel
12 Oltman forwarded that over to me, and basically he stated, "You and I
13 will attend." He sent that from his BlackBerry, and I think at that
14 time also I then forwarded it to Master Sergeant Papakie and Gunny
15 Blenis for their attendance as well; yes, sir.

16 Q. All right, so you attended.

17 A. Yeah, I attended.

18 Q. Colonel Oltman attended.

19 A. Yes, sir.

20 Q. Master Sergeant Papakie attended.

21 A. Yes, sir.

22 Q. Gunnery Sergeant Blenis attended.

23 A. Yes, sir.

1 Q. The meeting also was attended by Lieutenant Colonel Greer,
2 the Staff Judge Advocate for----

3 A. Yes.

4 Q. ---- Colonel Choike?

5 A. Yes, sir.

6 Q. Colonel Tom--T.V. Johnson attended.

7 A. Yes, sir, PAO.

8 Q. And Colonel Johnson was the PAO?

9 A. Yes, sir.

10 Q. Now in addition to the meetings that you would have with
11 Colonel Choike, you would have meetings with Colonel Oltman as well.

12 A. [Pause] Sir,----

13 Q. Is that correct?

14 A. ---- I would not have weekly meetings with Colonel Choike.
15 Colonel Oltman was my battalion commander. We had a staff meeting
16 every Wednesday, and again, if something was out of the ordinary that
17 would take place, then he would definitely be advised of that; but as
18 far as meeting in person with Colonel Choike, the base commander, no,
19 sir.

20 Q. All right, so your testimony now, today, apparently is you
21 would not have meetings with Colonel Choike on a weekly basis.

22 A. That's correct, sir.

1 Q. And is your testimony you wouldn't have meetings regarding
2 PFC Manning with Colonel Oltman on a weekly basis?

3 A. Well he and I spoke, yes, sir, not with Colonel Choike, the
4 base commander, but my boss, immediate boss, Colonel Oltman, he and I
5 would speak and, of course, we would talk, you know; well if
6 sometimes during the week he may have lunch at the facility, so, of
7 course, that was a point of conversation, you know, and if I'm at the
8 staff meeting or whatever the case may be, but, you know, was there
9 any conversation in regards to PFC Manning, no, sir.

10 Q. That wasn't my question. My question was you would have
11 weekly meetings with Colonel Oltman concerning PFC Manning.

12 A. Colonel Oltman, sir, not specifically in regards to PFC
13 Manning.

14 Q. Okay.

15 [The civilian defense counsel handed a document to the court
16 reporter. The court reporter marked the document as AE 440D and
17 handed it to the civilian defense counsel.]

18 CDC[MR. COOMBS]: I'm retrieving from the witness what has been
19 marked Appellate Exhibit 440Bravo and handing the witness [pause]--
20 I'm handing the witness what has been marked Appellate Exhibit
21 440Delta.

22 Q. Do you see that e-mail?

23 A. Yes, sir, I do.

1 Q. In that e-mail you were discussing having your weekly
2 meeting with Colonel Oltman?

3 A. Sir, what it says is, "Per your guidance, I've scheduled a
4 meeting for Monday, the 13th of September '10 to discuss Detainee
5 Manning's progress while in confinement. Although Captain Hocter has
6 recommended downgrading Detainee Manning, custody classification and
7 assignment board has disapproved this move and I concur with the
8 recommendation. I have approved that said named detainee will remain
9 in prisoner status. I'm prepared to speak to the decision as to why
10 I've disapproved the custody change."

11 Q. Okay, so this----

12 A. Yes, sir.

13 Q. ---- was a meeting with Colonel Oltman concerning PFC
14 Manning.

15 A. Colonel Oltman, yes, sir.

16 Q. And these meetings were attended by Master Sergeant
17 Papakie?

18 A. Yes, sir.

19 Q. Gunnery Sergeant Blenis?

20 A. This particular meeting, yes, sir. I always took--if there
21 was going to be a meeting regarding Manning, I would take the --my
22 operations chief and my senior counselor and the counselor--program
23 chief and the counselor for Manning.

1 Q. And you said on direct that you'd be naïve to say that
2 people above you were not paying attention to what was happening in
3 this case.

4 A. Sure, sir.

5 Q. So you knew that others were watching what was going on?

6 A. Sure.

7 Q. You knew that Lieutenant General Flynn was paying attention
8 to what was going on?

9 A. Sure, sir.

10 Q. And obviously within your chain that would be Lieutenant
11 General Flynn, Colonel Choike, Colonel Oltman, correct?

12 A. From high to low, yes, sir; high to low.

13 Q. And you also knew that people above Lieutenant General
14 Flynn were paying attention to what was going on.

15 A. Sure.

16 Q. Now on 29 July 2010 Captain Hocter evaluated PFC Manning,
17 correct?

18 A. Yes, sir.

19 Q. And Captain Hocter was the senior medical officer for the
20 Behavioral Health Clinic at Quantico?

21 A. Yes, sir.

22 Q. He also provided forensic psychiatry support for the brig.

23 A. Yes, sir.

1 Q. He had the responsibility, then, at the brig for providing
2 on site mental health care to detainees.

3 A. Yes, sir.

4 Q. On 30 July 2010, Captain Hocter again evaluated PFC Manning
5 and submitted a report to you.

6 A. Yes, sir.

7 Q. I'm sorry?

8 A. Yes, sir.

9 Q. And Captain Hocter recommended observing PFC Manning on
10 Suicide Risk precautions because of his suicide watch status in
11 Kuwait.

12 A. Okay; that may have been what it said, sir.

13 Q. Is that your memory?

14 A. Maybe; I'm not sure, sir.

15 Q. Do you recall Captain Hocter recommending to keep PFC
16 Manning on suicide watch?

17 A. Yes, sir. I recall that; yes, sir.

18 Q. All right, and so within---

19 A. I was just not sure of the verbiage, exactly what the
20 verbiage were in his write-up.

21 Q. That's fine.

22 So within days of arriving at the brig, Captain Hocter then
23 informed you that PFC Manning was starting to improve.

1 A. Yes, sir.

2 Q. And, in fact, on 6 August 2010, Captain Hocter determined

3 that PFC Manning was no longer considered a suicide risk.

4 A. Okay.

5 Q. Is that correct?

6 A. Yes, sir.

7 Q. And he recommended that you move PFC Manning from Suicide

8 Risk down to POI.

9 A. Yes, sir.

10 Q. Correct?

11 A. Yes, sir.

12 Q. And you, of course, reviewed his recommendation.

13 A. Yes, sir.

14 Q. And based upon reviewing his recommendation, you must have

15 seen that he had a--another doctor who also looked at PFC Manning.

16 Were you aware of that?

17 A. Okay, sir, I'd have to look at the paperwork. I'm not

18 sure, you know.

19 [The civilian defense counsel handed a document to the court

20 reporter. The court reporter marked the document as AE 440E and

21 handed it to the civilian defense counsel.]

1 CDC[MR. COOMBS]: I'm retrieving from the witness what has been
2 marked Appellate Exhibit 440Delta and handing the witness Appellate
3 Exhibit 440Echo.

4 Q. Was this the mental health review that you received from
5 Captain Hocter on 6 August 2010?

6 A. Yes, sir.

7 Q. And do you see in support of his recommendation, Captain
8 Hocter obtained the services of another senior forensic psychiatrist,
9 Colonel Rick Malone?

10 A. [Reviewed exhibit] Okay, yes, sir, I see in this--in this
11 write-up; yes, sir.

12 Q. And Colonel Rick Malone evaluated PFC Manning and he
13 concurred that PFC Manning should be downgraded from Suicide Risk to
14 POI, correct?

15 A. [Reviewed exhibit] What I see is Captain Hocter's write-up.
16 I don't see a write-up here from Colonel Malone. I see Colonel--
17 Captain Hocter's write-up stating that Colonel Malone--I concur with
18 my consultant, Colonel Malone, that degree of precaution from suicide
19 precaution to prevention of injury precaution, 5-minute check;
20 recommend that he not have screen up to [pause]----

21 Q. Well looking at that, Chief Averhart, do you see that what
22 Captain Hocter is saying is his consultant, Colonel Malone, agreed
23 with him?

1 A. I see Colonel--Captain Hocter's write-up, yes, sir, stating
2 that Colonel Malone--he agreed with Colonel Malone;----
3 Q. All right,----
4 A. ---- yes, sir.
5 Q. ---- so--so now looking at that as the--as the brig OIC,
6 you would see that you've got a recommendation from your forensic
7 psychiatrist,----
8 A. Yes, sir.
9 Q. ---- and your forensic psychiatrist has consulted with
10 another O-6 forensic psychiatrist.
11 A. Okay.
12 Q. Correct?
13 A. Yes, sir.
14 Q. And combined you have the recommendation to remove him from
15 Suicide Risk; is that right?
16 A. That's correct.
17 Q. And despite these recommendations, you did not immediately
18 remove PFC Manning from Suicide Risk.
19 A. That's correct.
20 Q. Now the Secretary of the Navy Instruction says when
21 prisoners are no longer considered to be suicide risks by a medical
22 officer they shall be returned to appropriate quarters,----
23 A. Yes, sir.

1 Q. ---- correct?

2 A. That's correct.

3 Q. And on direct, you said "shall" in your mind meant, quote,

4 He should be removed at a particular time to be determined, end

5 quote. Is that what your testimony is?

6 A. "Shall" does not mean if--"shall" does not mean--that is

7 what I said, "shall" does not mean, or more so the way I perceive it,

8 as immediately or right now or within a certain time limit.

9 Q. And why do you interpret "shall" to mean that way?

10 A. Because I'm just--that's my interpretation of the order.

11 You know, again----

12 Q. Did you talk to, maybe, a judge advocate to see if your

13 judge advocate would back you up on that interpretation?

14 A. No, I did not talk to a judge advocate at the time, sir.

15 Q. Did you talk to any of your brig staff to say, "Hey, what

16 is this, you know, this 'shall'? Does this mean right now or does

17 this mean when I get around to it?

18 A. No. I did not--you know, using the terminology "when I get

19 around to it," that's not sufficient, sir.

20 Q. Well I--I want--okay, how about "to be determined"?

21 A. Okay.

22 Q. How about that terminology?

1 A. After I'm satisfied and more so looking at the progress and
2 then the factors as well, then I made the decision to take him off
3 Suicide Risk, sir.

4 Q. So "shall" for you, does that have a time limitation?

5 A. It definitely depends, sir, on what is going on. Again,
6 you know, what I see as well, further medical--further mental
7 evaluation is necessary, okay, and the inmate has a low tolerance for
8 frustration and stress; those are big factors in jail, sir.

9 Q. Maybe so, but----

10 A. Yes, sir.

11 Q. ---- what my question to you is, for the "shall," you're
12 reading the SECNAV Instruction, you know you've got a forensic
13 psychiatrist saying you can--you should remove him,----

14 A. Right.

15 Q. ---- so what time limitation do you place on yourself with
16 a "shall"?

17 A. [Pause] What I placed on myself, again, sir, is the conduct
18 and the behavior and the things that are going on, the totality of
19 what is taking place at that particular time.

20 Q. So no time limitation?

21 A. Sure, there would be a time limitation, sir. I honestly---
22 -

23 Q. And that's what I'm trying to get to, so----

1 A. I--I----

2 Q. ---- what's your time limitation?

3 A. ---- I--I understand. I don't have a specific time

4 limitation, sir, at that time.

5 Q. So if you continue to have concerns that PFC Manning was a

6 suicide risk, would you keep him on Suicide Risk over the

7 recommendations of your forensic psychiatrist?

8 A. And my forensic psychiatrist was well aware of the status

9 and--of Detainee Manning, and I understand that he took--made the

10 recommendation to take him off; however, again, that's his

11 recommendation.

12 Q. And so that's--I want to get an answer, then, to my

13 question of if you believed he was still a suicide risk----

14 A. Yes, sir.

15 Q. ---- in spite of your recommendations from your forensic

16 psychiatrist would you keep him on Suicide Risk?

17 A. Not--not for a very extended period of time, sir, but, you

18 know, I have the authority to, again, to continue to observe him

19 because, again, the psychiatrist spends limited time with the

20 individual. You know, my staff spends every day with him.

21 Q. So that's what I'm trying to nail down. What is your time

22 period, because you testified on direct, now on cross, that "shall"

23 means to be determined and in your mind, then, you were going to hold

1 him on this Suicide Risk until you're satisfied that he no longer
2 needs to be on Suicide Risk; is that correct?

3 A. Yes, sir.

4 Q. So if you are still concerned about a detainee, we'll take
5 it from Detainee Manning,----

6 A. Okay.

7 Q. ---- but if you're still concerned about them as being a
8 suicide risk, are you going to hold them on that status until you're
9 no longer concerned that they're a suicide risk?

10 A. No, sir.

11 Q. And why not?

12 A. Because I understand the guidance say that, you know, I
13 received a recommendation from the psychiatrist and I shall take him
14 off at that particular time.

15 Q. Okay,----

16 A. Take him off of it.

17 Q. ---- so then if what your testimony is right now that
18 you're not going to hold him on there if you still consider him to be
19 a suicide risk because of the word "shall," then why isn't that word
20 "shall" something that requires you to take him off when you get that
21 recommendation from the forensic psychiatrist?

22 A. Because the--again, the order is saying--and although the
23 order is vague, it does not say--it say "shall." It does not say

1 "must right now" or "immediately," sir. It still give me the
2 opportunity to continue to evaluate.

3 Q. And--but apparently even under your interpretation, that
4 opportunity to evaluate is somewhat limited.

5 A. Yes; yes, sir.

6 Q. And you can't really give me the outward boundary of when
7 "shall" means okay, now I have to do it.

8 A. No, sir.

9 Q. Okay. So at this point, though, you send an e-mail to your
10 bosses telling them that it would not be a good idea to downgrade PFC
11 Manning to POI, correct?

12 A. Can I see the e-mail, sir?

13 Q. Sure. This is Appellate Exhibit 440Alpha [handing to
14 witness].

15 A. Thank you, sir.

16 CDC[MR. COOMBS]: Not a problem. Retrieving from the witness
17 Appellate Exhibit 440Echo.

18 Q. So you sent this to your bosses basically saying----

19 MJ: Which e-mail are you talking about?

20 CDC[MR. COOMBS]: 440Alpha, Your Honor.

21 MJ: Okay.

22 Q. ---- that you determined it would not be, quote, a good
23 idea to downgrade PFC Manning to POI; do you see that?

1 A. I do, sir.

2 Q. So that's the second--on the second page, next to the last
3 sentence.

4 A. [Reviewed exhibit] Yes, sir.

5 Q. So you sent this e-mail to Colonel Oltman and Colonel
6 Choike in order to explain why you decided to overrule Captain Hocter
7 and his consultant, Colonel Malone's determination.

8 A. Yes, sir.

9 Q. And Colonel Oltman and Colonel Choike did not respond back
10 to you that you were doing something wrong?

11 A. Doing something wrong, sir?

12 Q. Exactly.

13 A. Okay, where is it that I was doing something wrong at?

14 Q. Well they didn't write back to you saying, "Hey, you've got
15 to follow the advice of your forensic psychiatrist. You need to take
16 him off of Suicide Risk."

17 A. They did not send me an e-mail back, sir.

18 Q. And so they didn't--they didn't inform you that they
19 believed anything you were doing was wrong.

20 A. No, sir.

21 Q. Now under the SECNAV Instruction, even now as you sit there
22 today, you believe you didn't do anything wrong.

1 A. I believe that I had the leverage, sir, and the opportunity
2 to continue to observe within my authority so I did, you know.

3 Q. Okay. And so you believed that you didn't violate the
4 SECNAV Instruction.

5 A. That's correct, sir.

6 Q. Now you did not remove PFC Manning from Suicide Risk until
7 almost a week later, on 11 August 2010; is that correct?

8 A. Yes, sir.

9 Q. And why did you remove him, then, on 11 August 2010?

10 A. Because I was satisfied with his behavior. You know, I
11 felt that, you know, during this transition that although he may not
12 have been accepting his confinement, you know, then we can lower
13 that--lower that status and move on.

14 Q. So until 11 August 2010 you didn't feel that it was--you
15 didn't feel comfortable, I guess, following the advice of your brig
16 psychiatrist.

17 A. That would be the word, sir, didn't feel comfortable; that
18 is correct.

19 Q. Okay. Now over the course of the following 3 weeks, PFC
20 Manning is observed by your brig staff?

21 A. Yes, sir.

22 Q. And during this time, Gunnery Sergeant Blenis becomes his
23 counselor.

1 A. Yes, sir.

2 Q. And he notes in his observation and evaluation notes how

3 PFC Manning is doing over the course of these 3 weeks.

4 A. Yes, sir.

5 Q. And Sergeant Blenis tells you that as the counselor, he

6 meets with PFC Manning once a week.

7 A. Right.

8 Q. And on 10 August 2010, your weekly report, your progress

9 report, documents Gunnery Sergeant Blenis's counselor notes.

10 A. Right.

11 Q. And, in fact, every weekly report that you filed from that

12 point after always has Gunnery Sergeant Blenis's counselor's notes.

13 A. That's correct.

14 Q. And--unless it's Staff Sergeant Jordan, who is substituting

15 for him,----

16 A. Right.

17 Q. ---- and then you would include Staff Sergeant Jones--or,

18 excuse me, Jordan's notes.

19 A. Right.

20 Q. Now, in the section that Gunnery Sergeant Blenis would

21 write to you, he noted for the 10 August 2010 report that PFC Manning

22 had, quote, presented no problems to the staff or inmates, end quote.

23 Do you recall that?

1 A. I'd have to look at the report, sir.

2 Q. Okay. I'm handing you what is Enclosure 22 to Appellate
3 Exhibit 259, and just, if you would, Gunnery Sergeant--in fact, I'm
4 going to retrieve from you----

5 A. Yes, sir.

6 Q. ---- Appellate Exhibit 440Alpha.

7 If you would just kind of glance at this for just a moment
8 and then--just enough to where you can say that, yeah, that these are
9 my weekly progress reports.

10 A. [Did as directed] Yes, sir. These are my weekly progress
11 reports.

12 Q. All right, so these are the reports that are going up to
13 Colonel Oltman and then Colonel Choike and then up to General Flynn.

14 A. And to everyone else, sir; to the pros--to yourself; to the
15 prosecution, as well, sir.

16 Q. Okay. So looking at page 1 of 109, that's your 10 August
17 2010 report?

18 A. Yes, sir. Yes, sir, it is.

19 Q. And do you see the section where Gunnery Sergeant Blenis's
20 counselor notes are documented?

21 A. Yes, sir.

22 Q. And, again, during that time he stated that PFC Manning
23 presented no problems to the staff or inmates?

1 A. Okay; yes, sir.

2 Q. He also----

3 A. Well he--he doesn't have contact with other inmates, sir.

4 Q. I agree.

5 A. Okay.

6 Q. No, I agree with that. So he also said that PFC Manning
7 had been courteous and respectful?

8 A. Yes, sir.

9 Q. And that he reported to you that PFC Manning did not
10 receive any disciplinary reports?

11 A. That is correct.

12 Q. Any adverse spot evaluations?

13 A. No, sir.

14 Q. And received an average work in training report.

15 A. That is correct, sir.

16 Q. He also noted that PFC Manning reported to him that he did
17 not have any suicidal feelings.

18 A. Okay.

19 Q. Is that correct?

20 A. [Reviewed exhibit.]

21 Q. That would be towards the very end of Gunnery Sergeant
22 Blenis's.

23 A. [Reviewed exhibit] Yes, sir, that's correct.

1 Q. Now, if you would, turn to page 4 of 109.

2 A. [Did as directed.]

3 Q. This is the 18 August 2010 report, and again you have

4 Gunnery Sergeant Blenis's counselor's notes.

5 A. Yes, sir.

6 Q. And, again, Gunnery Sergeant Blenis tells you that PFC

7 Manning did not receive any disciplinary reports.

8 A. [Reviewed exhibit] Yes, sir.

9 Q. Did not receive any adverse spot evaluations.

10 A. That's correct, sir.

11 Q. Received a average work in training report.

12 A. Yes, sir.

13 Q. And he documents there that PFC Manning is, quote, showing

14 signs and states that he is adjusting to confinement well.

15 A. Okay.

16 Q. He also documents that PFC Manning was courteous and

17 respectful.

18 A. Okay.

19 Q. Is that correct?

20 A. [Reviewed exhibit] Courteous and respectful, yes, sir.

21 Q. And he also documents that PFC Manning stated to him that

22 he didn't have any suicidal feelings and had not been suicidal since

23 arriving at Quantico.

1 A. [Reviewed exhibit] Yes, sir, I see that, and it also states
2 that his body language made him appear more nervous than usual.
3 Q. Okay. It wasn't my question but that's fine.
4 A. Yes, sir.
5 Q. So the body language was more----
6 A. Yes, sir.
7 Q. ---- nervous than usual. All right, so if you go to page
8 7,----
9 A. [Did as directed.]
10 Q. ---- you see that's the 25 August 2010 report. Again, you
11 have Gunnery Sergeant Blenis's counselor's notes.
12 A. [Reviewed exhibit] Yes, sir.
13 Q. And, again, no disciplinary reports?
14 A. That's correct, sir.
15 Q. No adverse spot evaluations.
16 A. Yes, sir.
17 Q. An average work in training report.
18 A. Yes, sir.
19 Q. And Gunnery Sergeant Blenis tells you here, quote, To this
20 point in confinement, PFC Manning has presented no problems and has
21 been courteous and respectful to the staff, end quote.
22 You see that?

1 A. [Reviewed exhibit] Okay, I see that amongst other things,
2 sir; yes, sir.

3 Q. All right. So then at that point he tells you, again, that
4 PFC Manning does not have any suicidal feelings and has not been
5 suicidal since arriving at Quantico?

6 A. Yes, sir.

7 Q. So for this time period, that's what you're getting from
8 the gunnery sergeant that you trust the most, right?

9 A. That is correct, sir.

10 Q. And in addition to Gunnery Sergeant Blenis's reports, you
11 were also receiving mental health evaluations from Captain Hocter.

12 A. That is correct, sir.

13 Q. And Captain Hocter is telling you--or at least between the
14 time that PFC Manning arrived on 29 July 2010 to 27 August 2010,
15 Captain Hocter sees PFC Manning 17 times, correct?

16 A. Yes, sir; 17 times, I'll take your word there, sir.

17 Q. Well you actually document that in your weekly reports, do
18 you not?

19 A. Yes, sir.

20 Q. So every time Captain Hocter comes, that's part of the
21 documentation for visits.

22 A. Right.

23 Q. It states the date----

1 A. Time, yes.

2 Q. So 17 times between your first report and 27 August you

3 document Captain Hocter seeing PFC Manning.

4 A. That's correct, sir.

5 Q. And Captain Hocter recommends now on 27 August 2010 to take

6 PFC Manning off of POI, correct?

7 A. [Reviewed exhibit] You said on 27 August?

8 Q. That is correct.

9 A. Okay. [Reviewed exhibit] That was on the 25th, so

10 [reviewed exhibit]--okay, 27 August; okay, I got it; uh-huh.

11 Q. So he recommends that PFC Manning be taken off of POI on

12 that date, correct?

13 A. Yes, sir.

14 Q. And you don't follow his recommendation, do you?

15 A. No, I do not take his recommendation at that point in time,

16 sir.

17 Q. All right, and you don't--you keep PFC Manning on POI.

18 A. That's correct, sir.

19 Q. And why don't you follow his recommendation at that point?

20 A. Because also what you fail to mention as well, sir, that

21 although those comments that you make there, there's several other

22 statements and comments in the write-up from the counselor that have

23 other factors as well that I must take into consideration.

1 Q. All right, tell me what other factors that you're taking
2 into consideration.

3 A. [Reviewed exhibit] Okay. [Reviewed exhibit.]

4 Q. As you sit on the stand, can you think of anything that you
5 might have determined was more important than the good
6 recommendations that you were getting from Gunnery Sergeant Blenis as
7 far as his behavior and what he was doing and your forensic
8 psychiatrist's recommendation?

9 A. Okay. Again, a good thing would be, sir, and I'm, you
10 know, just speaking from the progress report on a specific date, so
11 if I look at the write-up and look at things that may have taken
12 place during that--during that week, you know, again because of the
13 progress I'm not--his progress report gives a snapshot. You know, it
14 does not give all the intricate details and things that the Gunny and
15 PFC Manning spoke about, about certain things that the Gunny may
16 write in his report, although he states, for example, said named
17 detainee did not--did not receive any disciplinary reports or adverse
18 spot evaluation and average--and received average work in training
19 report. During the interview, said detainee stated that he was doing
20 well but otherwise remained--doing well but otherwise remained quiet.
21 Said detainee will answer direct questions with direct answers but
22 says very little otherwise. He said and the detainee states that he
23 has no problems with other inmates on staff and that everything is

1 going well. He spoke with--stated that he did speak with David
2 Coombs and is going to hire him as a civilian attorney. To this
3 point in confinement, said named detainee presented no problems and
4 has been courteous and respectful to staff. Again,----

5 Q. I mean, what are you getting from there that indicates
6 that, you know, what? This guy needs to be on POI?

7 A. Well, again, sir, I look at the totality of everything, and
8 I look at if I--the ramifications in putting him into general
9 population at this stage. Again, it is my concern that there would
10 have been problems.

11 Q. Okay, based--all right, so I just want to get the factors
12 from you, so----

13 A. Okay.

14 Q. ---- I think what I've gotten so far from you is you've
15 got--well you just said you had a concern that there might be
16 problems if he's in general population.

17 A. That's correct, sir.

18 Q. And we'll talk about that----

19 A. Okay.

20 Q. ---- in a little bit, but what else are you seeing during
21 this time period to where you're not going to follow Captain Hocter's
22 recommendation?

1 A. And that's just what it is, sir. He's a recommendation;
2 the captain does not determine what goes on in the correctional
3 facility.

4 Q. No, I agree. I just wanted to know what other things
5 you're looking at to say, "Well in spite of Captain Hocter's
6 recommendations, I'm going to go this other way because of X, A, B,
7 C, D, whatever it is.

8 A. Well in this particular write-up for the 25th of August,
9 you know, you don't see some of the things that are taking place, you
10 know, as in other weeks, you know, again, and some of the behavior in
11 the cell, the peek-a-boos and, you know, doing things that's actually
12 annotated, so----

13 Q. That stuff is annotated, though, for the first time in
14 December of 2010. I'm talking about now why he's here, his first
15 month----

16 A. Okay.

17 Q. ---- or so, what are you seeing to say, "You know what; I'm
18 going to keep him in POI"?

19 A. Well if I look at the--some things like, again, low
20 tolerance for frustration. I look at the things as if--again, the
21 confining charges, his charges, these are things not knowing his
22 conversation at this time, he don't--he doesn't--at this particular
23 time he does not have an attorney, so I don't know what's going on in

1 this young man's head, but I have to take everything into
2 consideration.

3 Q. Okay, so I got low tolerance frustration, the confinement
4 charges, you know, some, I guess, up in the air over what----

5 A. Not----

6 Q. ---- attorneys are representing him----

7 A. ---- communication or lack of communication thereof, you
8 know.

9 Q. Lack of communication?

10 A. Right.

11 Q. Anything else?

12 A. [Reviewed exhibit] During this particular week of the 25th,
13 this is when Captain Hocter, 20 August, he recommended to remain POI
14 from this----

15 Q. Right, he makes his first recommendation to come off of POI
16 on 27 August 2010.

17 A. Correct. [Reviewed exhibit] That's it for this week, sir,
18 but that's it.

19 Q. All right, well let's--let's talk about Captain Hocter for
20 a moment. You addressed him a little bit on direct. We talked about
21 Captain Hocter as well telephonically, correct?

22 A. Yes, sir.

1 Q. And you told me you thought Captain Hocter was in a rush to
2 get in and then get out of the facility.

3 A. Very much, sir.

4 Q. You thought Captain Hocter would come into the facility and
5 then leave within a few minutes.

6 A. Yes, sir.

7 Q. You didn't believe he spent enough time with PFC Manning.

8 A. I agree; that's correct, sir.

9 Q. And in your opinion it was not--it was simply not possible
10 to come into the facility for a few minutes and conduct a proper
11 evaluation of PFC Manning.

12 A. That's correct, sir.

13 Q. You thought Captain Hocter was just kind of going through
14 the motions and in your words dotting the i's and crossing the t's
15 but not really doing a thorough examination.

16 A. That's correct, sir.

17 Q. In your opinion, Captain Hocter wasn't doing the job that
18 he was supposed to be doing.

19 A. Yes, sir.

20 Q. And obviously if Captain Hocter wasn't doing the job that
21 he was supposed to be doing and he was your only mental health
22 professional at that time seeing PFC Manning, then PFC Manning was
23 not getting the proper mental health support, correct?

INSTRUCTIONS FOR PREPARING AND ARRANGING RECORD OF TRIAL

USE OF FORM - Use this form and MCM, 1984, Appendix 14, will be used by the trial counsel and the reporter as a guide to the preparation of the record of trial in general and special court-martial cases in which a verbatim record is prepared. Air Force uses this form and departmental instructions as a guide to the preparation of the record of trial in general and special court-martial cases in which a summarized record is authorized.

Army and Navy use DD Form 491 for records of trial in general and special court-martial cases in which a summarized record is authorized. Inapplicable words of the printed text will be deleted.

COPIES - See MCM, 1984, RCM 1103(g). The convening authority may direct the preparation of additional copies.

ARRANGEMENT - When forwarded to the appropriate Judge Advocate General or for judge advocate review pursuant to Article 64(a), the record will be arranged and bound with allied papers in the sequence indicated below. Trial counsel is responsible for arranging the record as indicated, except that items 6, 7, and 15e will be inserted by the convening or reviewing authority, as appropriate, and items 10 and 14 will be inserted by either trial counsel or the convening or reviewing authority, whichever has custody of them.

1. Front cover and inside front cover (chronology sheet) of DD Form 490.
2. Judge advocate's review pursuant to Article 64(a), if any.
3. Request of accused for appellate defense counsel, or waiver/withdrawal of appellate rights, if applicable.
4. Briefs of counsel submitted after trial, if any (Article 38(c)).
5. DD Form 494, "Court-Martial Data Sheet."
6. Court-martial orders promulgating the result of trial as to each accused, in 10 copies when the record is verbatim and in 4 copies when it is summarized.
7. When required, signed recommendation of staff judge advocate or legal officer, in duplicate, together with all clemency papers, including clemency recommendations by court members.

8. Matters submitted by the accused pursuant to Article 60 (MCM, 1984, RCM 1105).

9. DD Form 458, "Charge Sheet" (unless included at the point of arraignment in the record).

10. Congressional inquiries and replies, if any.

11. DD Form 457, "Investigating Officer's Report," pursuant to Article 32, if such investigation was conducted, followed by any other papers which accompanied the charges when referred for trial, unless included in the record of trial proper.

12. Advice of staff judge advocate or legal officer, when prepared pursuant to Article 34 or otherwise.

13. Requests by counsel and action of the convening authority taken thereon (e.g., requests concerning delay, witnesses and depositions).

14. Records of former trials.

15. Record of trial in the following order:

- a. Errata sheet, if any.
- b. Index sheet with reverse side containing receipt of accused or defense counsel for copy of record or certificate in lieu of receipt.
- c. Record of proceedings in court, including Article 39(a) sessions, if any.
- d. Authentication sheet, followed by certificate of correction, if any.
- e. Action of convening authority and, if appropriate, action of officer exercising general court-martial jurisdiction.
- f. Exhibits admitted in evidence.
- g. Exhibits not received in evidence. The page of the record of trial where each exhibit was offered and rejected will be noted on the front of each exhibit.
- h. Appellate exhibits, such as proposed instructions, written offers of proof or preliminary evidence (real or documentary), and briefs of counsel submitted at trial.